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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Application of PacifiCorp          for Approval of a 2009 Request for Proposals          for Flexible Resource</p>	<p>) ) ) ) ) ) ) ) ) )</p>	<p>DOCKET NO. 05-035-47</p> <p><b><u>ROCKY MOUNTAIN POWER'S          OBJECTION AND RESPONSE TO          THE UTAH COMMITTEE OF          CONSUMER SERVICES' MOTION          FOR PRE-HEARING ORDER          PURSUANT TO R746-100-9</u></b></p>
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Pursuant to R746-100-4.D., PacifiCorp, by and through its Rocky Mountain Power division (“Rocky Mountain Power” or the “Company”), hereby objects and responds to the Utah Committee of Consumer Services’ (“Committee”) motion for pre-hearing order pursuant to R746-100-9 that was filed November 14, 2007.

**Brief Introduction**

1. The hearing presently scheduled for November 29, 2007 is the result of a motion filed by Rocky Mountain Power requesting that the Public Service Commission of Utah (“Commission”) authorize the Company to amend the 2012 request for proposals. It is the Company’s position that this is not a substantive based motion that requires a formal adjudicative evidentiary hearing, but rather, a motion that raises a procedural issue, not much different than a motion to amend a pleading pursuant to R746-100-3.D., that would be handled by the

Commission similar to other procedural motions, which is typically handled through argument by counsel. In addition to argument by counsel, the Company was planning on having specific Company representatives available to answer any technical questions the Commission may have regarding the Memorandum in Support of Rocky Mountain Power's Motion to Amend its 2012 Request for Proposals that was filed October 16, 2007 in support of the Company's motion to amend the request for proposals.

2. The issues identified by the Committee in its motion and the associated requests are either not properly before the Commission for purposes of the upcoming hearing or have already otherwise been addressed in prior Commission orders and Commission procedural rules. As such, the Committee's motion should be denied.

### **Objection and Response**

#### Commission's Notice of Hearing

3. The Commission issued its Notice of Filing Date for Responses to Motion to Amend 2012 Requests for Proposals and Notice of Hearing Date on October 26, 2007 and made no mention of a need for an evidentiary hearing. The Commission simply stated in its notice that "a hearing date, reserved to address any disputes that may arise on whether the October 2, 2007, Motion should be granted and the Request for Proposals be amended as requested by PacifiCorp." The Commission further stated "The Commission will hold a hearing on the Motion if any objections are raised" and "If objection is made, the Commission will conduct a hearing on November 7, 2007, at 10:00 a.m."

4. The Commission then issued an Amended Notice of Hearing October 30, 2007 and stated "the time and date for the hearing previously scheduled in this docket has changed. The hearing was previously set for Wednesday, November 7, 2007 at 10:00 a.m. Due to

scheduling conflicts, the date has been changed to Tuesday, November 20, 2007 at 9:30 a.m.”  
Once again no mention of the need for an evidentiary hearing.

5. The Commission issued a Second Amended Notice of Hearing November 14, 2007 stating “that the Hearing in this docket has been rescheduled from Tuesday, November 20, 2007, at 9:30 a.m. to Thursday, November 29, 2007, at 9:30 a.m.” Again, no mention for the need of an evidentiary hearing.

6. The Commission has not ordered an evidentiary hearing in this proceeding, the Company, who is the party that actually filed the motion, has not requested an evidentiary hearing and does not believe one is necessary to address the procedural issue raised in the motion, and no other party has submitted a request for an evidentiary hearing. As such, Rocky Mountain Power submits that the Committee’s request for a pre-hearing order is premature and simply not appropriate or necessary given the limited and narrow procedural issue presently before the Commission.

7. Furthermore, after the Commission has heard oral argument from the Company’s counsel and Company representatives, to the extent the Commission determines that an evidentiary hearing is needed to properly address the issue presented by the Company in its motion, the Commission can schedule one at that time. From the Company’s perspective, it would be premature to do so now.

#### Committee’s Request for a Pre-hearing Order

8. As a technical matter, Commission Rule R746-100-9, is not supportive of the Committee’s request for a pre-hearing order governing the November 29, 2007 hearing. To the contrary, R746-100-9 provides, upon motion by a party or the Commission, the Commission may hold a pre-hearing conference for purposes of, among other things, simplifying issues;

obtaining stipulations; determining procedure to be followed at the hearing; arranging for the exchange of exhibits; and agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Furthermore, R746-100-9 is more applicable to formal adjudicative hearings on substantive matters, such as, applications for certificates of public convenience and necessity, applications for deferred accounting orders, and applications to change rates. Not for procedural motions akin to a motion to amend a pleading.

9. At the conclusion of the hearing, or at any point during the hearing, if the Commission decides that the motion does address substantive issues that requires an evidentiary hearing, the Commission can schedule an evidentiary at a later date to address those issues. To turn this procedural matter into a formal adjudicative evidentiary hearing would be unnecessary at this point in time.

10. If the Commission has already determined that it believes an evidentiary hearing is necessary, at most the Committee's motion is only deserving of a Commission order scheduling a pre-hearing conference to address the items listed in R746-100-9, and not a pre-hearing scheduling order based upon a unilateral request of a single party shortly before the hearing, as has been requested by the Committee.

#### Committee's Procedural Requests

11. Rocky Mountain Power also objects to the Committee's characterization of the issues that it claims are presented by the Company's motion and to the Committee's procedural requests as they are either not properly before the Commission for purposes of the upcoming hearing or do not require further order from the Commission as they have already been addressed in prior Commission orders.

12. Contrary to the Committee's characterization of the issues that it claims are before the Commission, the only issue properly before the Commission is whether or not the Commission should permit the Company an opportunity to amend its 2012 request for proposals. Furthermore, this issue has already been properly framed by the Commission in its notice of hearing dated October 26, 2007, as whether or not the "Motion should be granted and the Request for Proposals be amended as requested by PacifiCorp."

13. Contrary to the Committee's assertions, the Company's motion does not raise the issue of cost recovery and the Company does not allege in its motion, nor does it raise the issue of, whether the Company has properly evaluated the results of the request for proposals. The Committee's incorrect framing of the issues does nothing more than over complicate a single procedural issue set in a broader proceeding that has already taken much longer than any party, including the Company, anticipated and would have preferred. The Company urges the Commission to proceed with the procedural motion hearing as has been ordered and not entertain the Committee's request to unnecessarily complicate a relatively straightforward procedural issue.

14. As noted above, the Company has not requested an evidentiary hearing and does not believe one is necessary to address the procedural issue raised in its motion, no other party has submitted a request for an evidentiary hearing, and the Commission's notice of hearing(s) have never noticed an evidentiary hearing. Accordingly, the Committee's request for a pre-hearing order requiring witness identification, order of witnesses, disclosure of documentary evidence, and cross-examination procedures are simply not necessary.<sup>1</sup>

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<sup>1</sup> To the extent the Commission determines an evidentiary hearing is necessary, the Company also takes exception with the Committee's request that the independent evaluator could offer testimony under oath in the proceeding without being subject to cross-examination. Any person offering testimony under oath in an evidentiary proceeding should be subject to cross examination. R746-100-5, R746-100-10 F.1., and §63-46b-8.

15. The Committee's request for a pre-hearing order to address burden of proof issues and procedures for treatment of confidential information are also unnecessary as these items have already been addressed by Commission Order.

16. It is unclear why the Committee would raise the issue of burden of proof when it is readily known that, as a general rule, the moving party has the burden of proof. Accordingly, since this is Rocky Mountain Power's motion, it would carry the burden of proof with regard to its request to amend the request for proposal.

17. It is somewhat troubling that the Committee has raised the issue of burden of proof. It appears they are doing nothing more than trying to circumvent proper procedure by not filing their own motion or countermotion and instead, attempting to get the Commission to address issues that are otherwise not properly before the Commission, in hopes of then arguing the Company now carries the burden of proof on the Committee's issue. The issues raised by the Committee should be raised in a separate motion or a countermotion, in which the committee would carry the burden of proof. The issues raised by the Committee in its motion are not issues raised by the Company in its motion and the denial of the Committee's request is proper.

18. Furthermore, the Commission issued a Protective Order and a Revised Protective Order<sup>2</sup> that set forth the proper procedure for dealing with Confidential Information and Highly Sensitive Non-Public Information. Paragraphs 1 (E) and 3 (C) of the Revised Protective Order provide that to the extent Confidential Information or the Highly Sensitive Non-Public Information will be discussed or disclosed in a proceeding, those parties who are not permitted access to the information pursuant to the terms and conditions of the Revised Protective Order shall be excluded from the proceeding and the information shall be discussed or disclosed in an *in camera* proceeding. Accordingly, there is simply no need for the Commission to preemptively

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<sup>2</sup> The Commission also issued an Erratum Revised Protective Order October 15, 2007.

exclude others from hearing at this point as requested by the Committee. If the Commission or another party wishes to discuss the contents of the Supporting Memorandum, then the Commission can convene an *in camera* portion of the proceeding at that time, and request that parties who have not complied with the Protective Order and Revised Protective Order to be excused from the proceeding.

### **Conclusion**

Based upon the foregoing, Rocky Mountain Power respectfully requests that the Commission deny the Committee's motion and proceed with the hearing as noticed by the Commission October 26, 2007, as amended.

To the extent the Commission determines the need to conduct an evidentiary hearing, the Company requests that the Commission deny the Committee's request for a pre-hearing order and instead schedule a pre-hearing conference to address these issues as provided by R746-100-9.

DATED this \_\_\_\_ day of November 2007.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of November 2007, I caused to be e-mailed a true and correct copy of the foregoing Rocky Mountain Power's Objection and Response to the Utah Committee of Consumer Services Motion for Pre-Hearing Order Pursuant to R746-100-9, as follows.

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