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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of the Complaint of Rocky Mountain Power, a Division of PacifiCorp, Against Heber Light & Power Regarding Unauthorized Service by Heber Light & Power in Areas Certificated to Rocky Mountain Power</p>	<p>Docket No. 07-035-22</p> <p>MOTION TO SET SCHEDULE</p>
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power”), pursuant to Utah Administrative Code R746-100-3.H, respectfully moves the Public Service Commission of Utah (“Commission”) to set a schedule in the above-captioned matter. Rocky Mountain Power respectfully requests that the Commission adopt an Amended Scheduling Order in the form attached hereto as Appendix 1 to facilitate prompt resolution of this matter in the public interest.

I. INTRODUCTION

This matter was commenced by Rocky Mountain Power filing a complaint on April 17, 2007. Thereafter, the parties requested that the Commission stay the proceedings to allow them to attempt to settle their dispute. When settlement was unsuccessful, Rocky Mountain Power filed an amended complaint and request for expedited relief on February 5, 2008. The basis for the request for expedited relief was that “[p]otential customers, including major developments, are being delayed pending a resolution of the disputes.” The Commission entered a scheduling order on March 11, 2008, and, in accordance with that order, Heber Light & Power Company (“HLP”) filed an answer and motion to dismiss for lack of jurisdiction on April 4, 2008. The Division of Public Utilities (“Division”) filed a response opposing HLP’s motion on April 18, 2008. On the same day, Rocky Mountain Power filed a motion to stay the procedural schedule to allow the parties to engage in further settlement discussions. The Commission granted that motion, and the schedule was again vacated and stayed for several months. Settlement was again unsuccessful, so the parties requested the Commission to set a new schedule.

Pursuant to the new schedule, Rocky Mountain Power filed a response opposing HLP’s motion to dismiss on September 17, 2008. HLP replied on September 29, 2008, and a hearing was held on the motion to dismiss on October 8, 2008. The Commission issued its order denying the motion to dismiss on November 3, 2008. On the same day, the Commission issued a scheduling order, setting a schedule for proceedings in accordance with discussions with the parties. The scheduling order set dates for filing testimony and a hearing in May 2009.

The parties engaged in discovery and became involved in discovery disputes that resulted in both parties seeking changes to the schedule. On February 25, 2009, the Commission granted HLP’s motion to strike the schedule, except for a status and scheduling conference set for March 26, 2009, pending resolution of the discovery disputes.

While the foregoing was taking place, on December 3, 2008, HLP requested the Commission to reconsider its order denying its motion to dismiss for lack of jurisdiction. Rocky Mountain Power responded opposing the request on December 18, 2008. The Commission took no action on HLP's request, so it was deemed denied by operation of law. On January 21, 2009, HLP filed a petition for review of the order with the Utah Supreme Court that is pending as *Heber Light & Power Company v. Utah Public Service Commission and Rocky Mountain Power*, Case No. 20090053-SC. On February 2, 2009, Rocky Mountain Power filed a motion to dismiss the petition on the ground that the Commission's order was interlocutory. HLP responded opposing the motion to dismiss on February 20, 2009. On February 28, 2009, Rocky Mountain Power filed a reply. On March 2, 2009, the Court issued an order deferring consideration of Rocky Mountain Power's motion to dismiss until plenary presentation on the merits of HLP's petition for review. The Court also set a briefing schedule under which HLP's brief is due May 5, 2009, response briefs are due approximately June 4, 2009, and HLP's reply brief, if any, is due the earlier of approximately July 6, 2009 or five days prior to oral argument.¹ Rocky Mountain Power intends to file a motion requesting that the Court expedite the briefing and hearing schedule.

The Commission held the status and scheduling conference on March 26, 2009. The parties were unable to agree on how the matter ought to proceed. HLP stated that it intended to file a motion to stay proceedings in the Commission pending the Supreme Court's action on its petition for review. It was agreed that HLP would file the motion by April 8, 2009, that parties would respond by April 27, 2009, and that HLP would reply by May 11, 2009. Beyond that, no schedule was set for further proceedings in the matter.

¹ Only approximate dates can be given because the due date for subsequent briefs will depend on how the briefs are served.

II. STATEMENT OF FACTS

Some of the development in Wasatch County that was pending in early 2008 and that prompted Rocky Mountain Power to request expedited relief in its amended complaint was delayed as a result of the significant credit crisis and economic recession that developed in 2008. Nonetheless, developers with projects in portions of Wasatch County outside the municipal boundaries of the members of HLP have contacted Rocky Mountain Power regarding provision of power to them for work that they contemplate commencing during the 2009 construction season. At least one of these developments is outside the municipal boundaries of the members of HLP but within the area that HLP claims is within its service territory and another is adjacent to an area currently served by HLP, but outside the boundary of its claimed service territory. As the economy begins to recover, Rocky Mountain Power believes these types of circumstances will increase in number and frequency. Furthermore, lack of resolution of the issue whether Rocky Mountain Power or HLP will provide service in portions of Wasatch County outside the boundaries of Heber City, Midway City and the Town of Charleston impairs the ability of Rocky Mountain Power to plan construction projects and power needs to provide service in an efficient and economical manner on a long-term basis in these areas of Wasatch County. Finally, HLP has argued that the Commission's order denying its motion to dismiss for lack of jurisdiction has placed it in an untenable position in which it may be operating illegally outside the boundaries of its members as a public utility subject to Commission jurisdiction because it is not in compliance with the statutes and rules applicable to public utility service.

III. ARGUMENT

Rocky Mountain Power appreciates the Commission's willingness to stay proceedings at the request of the parties at earlier stages of this proceeding to allow the parties to pursue settlement discussions. Rocky Mountain Power recognizes that the delays in the proceeding to

date have been requested by the parties for this purpose. However, Rocky Mountain Power believes it is in the public interest for the Commission to schedule further proceedings in this matter at this time so that the issue of which entity will be responsible to provide service in areas outside the municipal boundaries of HLP's members will be resolved as expeditiously as possible.

There are several reasons why the Commission should enter a scheduling order in this case. Entering a scheduling order at this time will allow for timely disposition of the issues presented and will preserve the possibility of effective and prompt relief for the parties involved. On the other hand, failure to enter a scheduling order would result in unnecessary delay and would have the adverse effect of prolonging the confusion that currently exists as to whether HLP can continue to encroach on Rocky Mountain Power's service territory. Indeed, HLP's expansion of its services outside of the municipal boundaries of its members and into Rocky Mountain Power's service territory raises questions regarding whether it is in the public interest for Rocky Mountain Power to install facilities to provide service in that same area. In addition, HLP has argued that the Commission's order denying its motion to dismiss for lack of jurisdiction has put it in an untenable position because it may be operating illegally as a public utility under the jurisdiction of the Commission without complying with statutes and rules applicable to public utilities.

Prompt resolution of this case is vital, not only to the Rocky Mountain Power and HLP, but also to the customers and potential customers who are located in the disputed area and are in need of retail electric services. Lack of resolution of the issue is resulting in actual problems for real customers. These type of problems will only increase in number and frequency as the economy begins to recover. The ability of Rocky Mountain Power to plan construction projects

and power needs to serve customers in unincorporated Wasatch County in an efficient and economical manner is impaired while this dispute remains unresolved.

Rocky Mountain Power, in asking that the Commission set a schedule, is fully aware of the interlocutory appeal currently pending before the Supreme Court. Nevertheless, entrance of a scheduling order by the Commission at this time will in no way conflict with or hinder the Supreme Court's ability to completely resolve the issues presented in that appeal. Indeed, the proposed schedule has been developed in consideration of the briefing schedule before the Supreme Court, and any scheduling order entered by the Commission may be subject to modification or vacation depending on the Supreme Court's decision. As mentioned above, Rocky Mountain Power intends to file a motion requesting the Supreme Court to expedite the schedule in the appeal in light of the same considerations prompting this motion. Furthermore, regardless of the Supreme Court's ultimate decision, the Commission will have continuing jurisdiction over Rocky Mountain Power and its obligation to serve in areas in which HLP is providing service outside its members' municipal boundaries.

By filing this motion in advance of the deadline for HLP to file its motion to stay, Rocky Mountain Power does not seek to confuse or interfere with the schedule set for that motion. Rather, inasmuch as there is no schedule currently in place, Rocky Mountain Power believes this motion will provide a context for HLP's proposed motion. If the Commission determines to deny the stay, this motion provides a schedule that may be set by the Commission leading to a prompt resolution of the issues in the public interest.

IV. CONCLUSION

For the reasons set forth herein, Rocky Mountain Power respectfully requests that the Commission enter an Amended Scheduling Order in the form attached as Appendix 1. Prompt resolution of the issues in this matter is necessary to enable the parties to fulfill their service

obligations in a reasonable and efficient manner. It is also necessary to allow developments in Wasatch County located outside the municipal boundaries of members of HLP to proceed knowing the entity that is responsible to provide their electric service.

DATED: March 31, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **MOTION TO SET SCHEDULE** to be served upon the following by email to the email addresses shown below (except as indicated where service was by regular U.S. Mail, first class postage prepaid, to the address shown) on March 31, 2009:

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