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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations, Consisting of a General Rate Increase of Approximately \$161.2 Million per Year, and for Approval of a New Large Load Surcharge | | Docket No 07-035-93 |
| | | REPLY TO ROCKY MOUNTAIN POWER'S RESPONSE TO ROGER J BALL'S REQUEST FOR PUBLICATION OF NOTICE OF APPLICATION TO INCREASE RATES AND OF HEARINGS; TO SUBDIVIDE INTERVENTION; TO EXPEDITE TEST PERIOD INTERVENTION AND THE EXCHANGE OF DATA; AND TO INTERVENE |

I respectfully request that the Public Service Commission of Utah (1) immediately approve my intervention in this matter and (2) dismiss Rocky Mountain Power's *Response* because it is out of time or, in the alternative, deny the *Response* because its entire content is either moot or lacking in merit.

1 THE DEADLINE ESTABLISHED BY THE COMMISSION FOR OBJECTIONS TO IT HAVING PASSED WITH NO OBJECTIONS FILED, MY REQUEST TO INTERVENE IN THIS MATTER SHOULD BE APPROVED IMMEDIATELY

1.1 On 24 December 2007, I filed my *Request for Publication of Notice of Application to Increase Rates and of Hearings; to Subdivide Intervention; to Expedite Test Period Intervention and the Exchange of Data; and to Intervene (Request)*. In pertinent parts I wrote:

during the 20 December Scheduling Conference the notion was advanced that any motion requesting a *test period* hearing should be filed by 4 January 2008, but potential intervenors requested that the cut-off date for such a motion should be 11 January with a 7 calendar day

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REPLY TO ROCKY MOUNTAIN'S RESPONSE

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turnaround for *test period* discovery prior to the filing of direct testimony on the date proposed by the Commission, 25 January;¹

it appeared that the 11 January intervention deadline, and requirement to file any objections by 17 January (just three business days later), in the Proposed Schedule was intended to facilitate participation in any *test period* segment of this proceeding;²

using the timescales provided in UAC §746-100-4(D) the Commission might not be able to approve a request to intervene filed concurrently with this one before 21 January at the earliest, prior to which parties could decline to answer any discovery, and object to any motion, regarding *test period* on the grounds that the requester had not yet been granted intervention, thus depriving the requester of the legitimate opportunity to request a *test period* hearing, and of reasonable time to prepare and file testimony by 25 January if such a hearing is convened for any reason;³

there appears to be no insurmountable reason why the Commission could not subdivide intervention as it has the proceeding, providing an expedited process with an early deadline for early requesters who might want to move for or participate in a *test period* hearing, and a more usual timescale allowing time for Rocky Mountain Power to publish notice so that a larger number of those who stand to be affected by the proposed rate increase may become aware of it and to give due opportunity for a better-informed public to decide whether to seek intervention in the later stages;⁴

I request that the Commission subdivide intervention in this proceeding, providing first an expedited process that will allow a requester who files on 11 January to be granted intervention no later than 21 January and to conduct two rounds of discovery before filing direct testimony on 25 January.⁵

Emphases added.

1.2 On 27 December, the Commission issued its *Scheduling Order* in this Docket stating that:

Objections to an intervention request of a person raising test year issues are to be made within 5 calendar days after service of the intervention request and replies to any objections shall be made within 5 calendar days after service of an objection.⁶

While this did not exactly accord with my *Request*, I am not aware of any discussion during the Scheduling Conference, or of any other information provided to the Commission from any other

¹ *Request*, paragraph 6.

² *Request*, paragraph 7.

³ *Request*, paragraph 10.

⁴ *Request*, paragraph 11.

⁵ *Request*, page 6 of 8, first complete paragraph, first sentence.

⁶ *Scheduling Order*, under 2 *Intervention*, B *Test year issues*, second sentence.

interested person, that might have caused it to include this provision. Nowhere did the Commission specify *how* a person requesting intervention should make known that he is contemplating raising test year issues in order to qualify for the expedited objection and reply schedule. However, my *Request* had been filed three days prior to the *Scheduling Order* being issued; the extracts from the *Request* quoted above ought to have sufficiently announced to the Commission and parties my interest in any Test Year component of this proceeding; the Commission should apply the expedited schedule for “a person raising test year issues” to my *Request*; the deadline for objections to my *Request* expired 5 calendar days after it was filed, or on 31 December 2007; no objections were filed by that date; and the Commission should forthwith approve my intervention.

1.3 However, on 7 January, Rocky Mountain Power (RMP) filed and served upon me its *Response to Roger J Ball’s Request to Intervene (Response)*.

2 ROCKY MOUNTAIN POWER’S RESPONSE SHOULD BE DISMISSED BECAUSE IT IS OUT OF TIME, CONTRADICTIONARY, AND THE PARTS RELATED TO THE SCHEDULE WERE MOOT WHEN IT WAS FILED

2.1 Commission Rule UAC §746-100-4(E) states:

The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

If the Commission intended that part of its *Scheduling Order* quoted in paragraph 1.2 above to me modified by the terms of §746-100-4(E), this *Reply* is timely filed. If not, I request that the Commission permit me to file this *Reply to Rocky Mountain Power’s Response to Roger J Ball’s Request for Publication of Notice of Application to Increase Rates and of Hearings; to Subdivide Intervention; to Expedite Test Period Intervention and the Exchange of Data; and to Intervene*

(*Reply*) out of time because I was unable to file it on Saturday 12 or Sunday 13 January since the Commission's offices were closed to the public on those days.

2.2 In paragraph 10, RMP says:

All of the requests in Mr. Ball's motion, which is really an improperly styled and prematurely filed Motion for Reconsideration, were presented to the Commission at the Scheduling Conference.

This argument was moot before the Company filed its *Response* on 7 January 2008 in light of the Commission's *Scheduling Order* issued on 27 December 2007 which, in pertinent part, states: "Based on the information presented by interested persons *and* the discussion at the ... Scheduling Conference".⁷ That appears to mean that the Commission took account of the scheduling aspects of my *Request* in formulating its *Scheduling Order*.

2.3 Despite the tardy filing of its extensive *Response*, RMP claims in Item 2 of its Conclusion not to have had adequate opportunity to respond to the components of my *Request*. Patently Item 2 is intended to erect an obstacle to my effective intervention in this proceeding, which RMP earlier in paragraph 8 claimed not to object to. The Commission should afford no legitimacy to such prestidigitation and should disregard these two elements of the *Response* because they are contradictory.

2.4 Rocky Mountain Power failed to respond to my *Request* either by Saturday, 29 December, the 5 calendar days specified in the Commission's *Scheduling Order* or by Monday, 31 December, as more leniently calculated under §746-100-4(E). In fact, the date on which the utility filed its *Response*, 7 January 2008, was 14 calendar days after service of my *Request*. Even if counted from the issue of the *Scheduling Order*, the *Response* was filed 11 calendar days later. RMP's *Response* was out of time, and should be dismissed.

⁷ *Scheduling Order*: preamble, first sentence.

3 ROCKY MOUNTAIN POWER'S RESPONSE LACKS MERIT

3.1 The Standards of Professionalism and Civility approved by the Utah Supreme Court include:

Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.⁸

Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.⁹

3.2 In paragraph 7 of its *Response*, RMP characterises my *Request* as convoluted and confusing, and attempts to re-frame the specifics of my *Request*. Since my *Request* was clearly stated, and the Company provides no basis for its characterization or other rationale for its attempt, it appears that it did so in order to *demean the Request, disparage the intelligence* of its author, *attribute to me positions and claims that I have not taken*, and *seek to create unjustified inferences or otherwise create a record that has not occurred*. The Commission should lend no credence to such an objection and should regard future representations from their source with appropriate scepticism.

3.3 In paragraph 8, RMP says:

Mr. Ball's motion demonstrates that he is either not aware of the Rules that govern proceedings before this Commission or he is intentionally ignoring the rules that Rocky Mountain Power and all other parties to this proceeding are required to comply with. Mr. Ball should not be granted a special dispensation simply because he is acting as a pro se party.

Exactly how and where does my *Request* demonstrate such a lack of awareness, intentional ignoring of rules that all others must comply with, application for special dispensation, or reference

⁸ Rules of Professional Practice: Chapter 23, Standards of Professionalism and Civility: paragraph 3.

⁹ Id: paragraph 4.

to my acting as a pro se party? RMP doesn't say, and the *Request* doesn't, so the Company's claims are groundless.

3.4 In paragraph 9, RMP says:

At the time that Mr. Ball filed his Request, the Commission had not yet issued a Scheduling Order, and therefore Ball's requests are premature.

I thought it more appropriate to address scheduling issues before rather than after the Commission issued an order, and am indeed unaware of any rule barring that. Yet RMP offers no citation of such, and provides no foundation for its conclusion of prematurity.

3.5 In paragraph 10, RMP makes another attempt to re-frame my *Request*:

All of the requests in Mr. Ball's motion, which is really an improperly styled and prematurely filed Motion for Reconsideration, were presented to the Commission at the Scheduling Conference

and, in paragraph 11:

each of Mr. Ball's arguments was presented to the Commission's representative at the scheduling conference, at which time they were taken under advisement by the Commission. Mr. Ball is, in his motion, seeking the proverbial "second bite at the apple," which has not been afforded the other parties in this docket.

3.5.1 Unfortunately, there is no recording or transcription of the 20 December 2007 Scheduling Conference conducted by the Commission's Secretary against which to incontrovertibly check RMP's second assertion in this sentence. It was a conference, not a hearing; no commissioner was in attendance; some of the issues were complex, particularly those around intervention and a possible test year hearing; it was not unreasonable for me to put my arguments in writing to avoid misunderstanding; I made haste to do so over the weekend following the Conference in order not to cause delay; any party or other interested person had a similar opportunity; and the *Scheduling Order* to which RMP now represents my *Request* was "an improperly styled and prematurely filed Motion for Reconsideration" was not issued until three days after the *Request* was filed.

3.5.2 The Commission issued its *Notice of Scheduling Conference* on 13 December 2007, four days before RMP filed its *Application* on 17 December. I did not receive a copy, and first became aware of it when I searched the Commission's website after the Utah Division of Public Utilities emailed me its scheduling proposal on the afternoon of 19 December. At that point in time, the latest entry in the Commission's website log was dated 27 November 2007.

3.5.3 I don't know when RMP received the Division's scheduling proposal, but I first saw it barely in time to print and bring a copy to the Conference. I didn't receive copies of RMP's or the Commission's proposals until they were handed around during the Conference. All this despite the fact that I was an intervenor in the Company's previous rate case (Docket 06-035-21), had informed an RMP regulatory executive some two months earlier that I intended to intervene, and asked him that the Company copy me on everything it filed. This extremely compressed timeframe hardly allowed me to fully absorb the Division's proposal, much less research all the arguments that I might wish to advance during the Scheduling Conference itself.

3.5.4 Although my recollection is that I raised the possibility of bifurcating intervention during the Conference, I did not explore it in the detail set out in paragraphs 9, 10, 11 and the first, second and third complete paragraphs on page 6 of my *Request*. Although I made a general request during the Conference for notice to be published of the Application, I was not yet in a position to support it with the arguments set out in paragraphs 9, 12, 13, the last paragraph beginning on page 5, the third complete paragraph on page 6, and the first complete paragraph on page 7 of my *Request*, including the citations to Commission Rule §746-100-4(C) and to UCA §17B-1-643(2)(b), neither of which were mentioned during the Conference.

3.5.5 To the extent that the Commission considered my *Request* in preparing its *Scheduling Order*, it did so quite properly.

3.6 The central sentence of RMP's paragraph 10 (an argument essentially repeated in the final sentence of paragraph 12) may well contravene Rules of Professional Practice §23-3 and 4. If there was any non-superfluous, non-condescending, purpose for its inclusion, I'm afraid it escapes me. However, remembering the playwright who characterised the Devil as grateful for ideas put into peoples' heads by the Ten Commandments, I am grateful to RMP for the suggestion.¹⁰

3.7 Rocky Mountain Power wants the penny and the bun. The first item of its *Conclusion* on page 6 of its *Response* asks the Commission to label my *Request* as premature and untimely, yet it contended in paragraph 12 that "the Commission should nevertheless dismiss Mr. Ball's arguments as moot" because "(t)he Commission has addressed each of his arguments and requests in the scheduling order". In fact, my *Request* was filed three days before the *Scheduling Order* was issued. It was not moot when filed, and issuance of the *Scheduling Order* did not render moot the parts of the *Request* that had nothing to do with the schedule in this matter.

3.8 RMP, in paragraph 13 of its *Response* again re-frames my *Request*, claiming that: "Mr. Ball concedes that he has not "fully determined the specific positions" he will take and whether those will differ from those determined by the (Utah) Committee (of Consumer Services)." Only time will tell what positions the Committee may take; it most certainly has not adopted ones that I consider to have been in my best interests in a number of cases, including the settlement of the Company's last rate case; and it has reversed course following a series of private and unannounced negotiations and several closed meetings, at least one of which was illegally convened, in at least one issue – the coal-seam gas processing case, Docket 05-057-01 – where the Commission brought forward its procedural schedule on very short notice to hear arguments only in support, and then approved an agreement between a utility, the Division and the Committee which harmed my interests by raising my rates as well as those of all other similarly situated ratepayers.

¹⁰ Alan Melville: *The Devil to Pay*, circa 1960.

3.8.1 The Company goes on to assert that: “Accordingly, the Committee of Consumer Services adequately represents Mr. Ball’s interests at this time.” In fact, the Committee has hired several experts who will report only to Committee staff; staff will provide only limited reports on their and the retained experts’ analysis and recommendations to the Committee in public meetings; more detailed reports will be offered and strategy discussed only in closed meetings; I may well never learn how many, or when, or where, private negotiation sessions are held; and I may discover the Committee’s positions only when it is too late to intervene in the manner recommended by RMP.

3.8.2 The Utah Supreme Court, in its 12 October 2007 opinion in cases 20060279 and 20060280 *In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah*, affirmed “the Commission’s Intervention Order denying Ball and Geddes intervention in the Commission proceedings” apparently because “both Ball and Geddes were familiar with the proceedings and, had they wanted to intervene, they should have done so in a more timely manner.” My *Request* in this matter was timely filed; it is similar to the one I filed on 16 March 2006 in the Company’s last rate case, Docket 06-035-21;¹¹ the utility raised no objection to that intervention request, which the Commission granted 22 days after it was filed; and the Commission should grant this *Request* forthwith.

3.8.3 RMP further declares that: “The Commission should be conscientious of the fact that ratepayers already have a party acting on their behalf”. If that were strictly accurate, the Company should be expected to raise similar objection to the intervention of UAE, UIEC, Nucor Steel and representatives of low-income groups, who routinely seek and receive intervention without its objection, without specifying the positions they will eventually adopt, and without having to later

¹¹ In paragraph 16 of this present *Request*, I combined the exact words of paragraphs 5 and 6 of that previous request with the sole addition of the word “and”. The content of paragraph 17 of this *Request* is in all respects identical to that of paragraph 7 of the previous request.

“make an evidentiary showing that (they) are uniquely situated” with “an independent, separate interest that is not adequately represented by the Committee” or any other party.

3.9 Oddly, in paragraph 14, RMP goes on to complain that I appear “to be attempting to represent other parties in this proceeding.” When the Committee of Consumer Services chose to support an agreement between itself, the Division and others in the *Application to Remove GSS and EAC Rates from Questar Gas Company’s Tariff*, Docket 06-057-T04, the only party left representing the interests of some 800,000 residential ratepayers was me, and the Commission substantially agreed with me. It probably wouldn’t have done that if my interests didn’t coincide with those of the great majority of other residential ratepayers. I will be very happy if the Committee in this proceeding adopts only positions, and all of the positions, that I agree are most advantageous to me and to other similarly situated RMP customers. On the chance that it will not, I should be granted intervention to represent my interests as they appear. On the chance that my interests may coincide with those of others, I should be allowed to point that out.

3.10 RMP’s arguments that are not out of time because its *Response* was filed after 31 December 2007, or moot because it was filed after the Commission issued its *Scheduling Order* on 27 December, are entirely lacking in merit.

4 REQUEST FOR RELIEF

I therefore request that the Commission (1) immediately approve my intervention in this matter and (2) dismiss Rocky Mountain Power's *Response* because it is out of time or, in the alternative, deny the *Response* because its entire content is either moot or lacking in merit.

Respectfully submitted on 14 January 2008,

Roger J Ball

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Rocky Mountain Power's Response, etc, in Docket 07-035-93 of Roger J Ball was hand delivered, sent by United States mail, postage prepaid, or mailed electronically on 14 January 2008, to the following:

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