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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 07-057-93 UTAH COMMITTEE OF CONSUMER SERVICES RESPONSE TO ROCKY MOUNTAIN POWER REQUEST FOR CLARIFICATION OF SCHEDULING ORDER
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As permitted by R746-100-11 (F), the Utah Committee of Consumer Services responds to Rocky Mountain Power’s Petition for Clarification and Reconsideration of the Utah Public Service Commission’s Scheduling Order, in so far as the Order establishes a discovery schedule.

The Committee is aware that a matter as complex in so many facets as a utility general rate case requires the exchange and analysis of an enormous amount of data and other information. As the Commission recently held: “Selection bias is but one manifestation incident to the flow of, or access to, information concerning a utility’s operations. The utility is truly the gatekeeper to information concerning what has happened, what is happening and what the utility anticipates can happen as its management continues pursuit of its business plans.” *Report and Order, January 3, 2008, In the Matter of Accounting Order Applications, Docket Nos. 06-035-163, 07-035-04, 07-035-14*, page 19. The Commission plainly identifies the necessity for and

benefits to all parties that follow the exchange of accurate and comprehensive data and information. *Id.*, page 21-22.

The enormity of the discovery process in a utility general rate case is also a product of the necessary but unusually rapid time period within which the rate case is litigated. Utah Code §54-7-12(3). Compared to the expected time to litigate a complex commercial civil case, completing the case within 240 days requires that extensive discovery be compressed into a few months, rather than years.¹ The civil rules that Rocky Mountain cites in paragraph 24 of the Petition as support for its requests, recognize that civil litigation proceeds in stages: initial pleadings, preliminary motions, pretrial, scheduling and management conferences, depositions and discovery, dispositive motions, trial and post-trial proceedings. Typically, parties do not proceed to the next stage until the preceding one is complete. Accordingly, parties often have the luxury of time for successive sets of discovery, informal extensions of time to respond, and discovery methods not typically found in utility general rate cases. The parties to this docket do not have that luxury.

The civil rules of procedure are in fact, supportive of the Commission's scheduling order. The general obligations of parties to provide initial disclosures, pretrial disclosures, and to meet and develop a discovery schedule and plan, are certainly presumed by the Commission's scheduling order, provided for by Commission rules such as R746-100-8, and quite correctly can be expected of the parties and their counsel. The Committee expects that the candid and cooperative approach to discovery that has characterized past general rate cases, will be the trait repeated in this case.

¹ Utah Rule of Civil Procedure 26(d) states that "fact discovery" is to be completed within 240 days after the first answer is filed, unless the parties stipulate or the court orders otherwise.

The Commission's scheduling order by itself is not burdensome nor does it allow abusive discovery. In the Committee's opinion, it does not foster discovery of a volume or scope that tests the limits of Rocky Mountain's resources. The Commission has allowed parties to agree to response and delivery times different from those specified by the scheduling order. Long before discovery is restricted or prohibited, the Committee expects parties and counsel to communicate, cooperate and compromise. Should this fail, the Commission has provided a forum wherein a remedy matching the gravity of the abuse can be quickly fashioned.

5. Service of documents and discovery information.

C. Objections to discovery requests shall be made in good faith and as soon as an objection is contemplated. Discovery disputes will be set for expedited resolution before a hearing officer designated by the Commission.

The Commission's scheduling order correctly presumes that parties will accommodate one another. Indeed, the parties must if all are to properly prepare first for the early May hearing, and then the extensive early June hearings. The Commission ought not to presume the worst and restrict discovery from the beginning.

RESPECTFULLY SUBMITTED this 17th day of January 2008.

/s/ _____
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