

MICHAEL L. GINSBERG (#4516)
Assistant Attorney General
PATRICIA E. SCHMID (#4908)
Assistant Attorney General
MARK L. SHURTLEFF (#4666)
Attorney General of Utah
Counsel for the DIVISION OF PUBLIC UTILITIES
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380

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 Regulations, Consisting of a General Rate Increase of Approximately \$161.2 Million Per Year, and for Approval of a New Large Load Surcharge

RESPONSE BY THE DIVISION OF PUBLIC UTILITIES (DPU) TO THE OPPOSITION TO A TEST YEAR HEARING FILED BY ROCKY MOUNTAIN POWER (RMP)
DATED JANUARY 22, 2008

DOCKET NO. 07-035-93

1. On January 11, 2008 UAE filed a request for a test year hearing. On January 11 the DPU also filed a Notice that in essence stated that the DPU had not had sufficient time to analyze all of the rate case material and reserved its right to raise test year issues later in the docket if it found it necessary.

2. RMP uses the DPU notice as a means to support its argument that the Commission should not make a determination on what test period should be used in this Docket at the February hearing. The DPU makes this filing to make its position clear as to whether a test year hearing should be held or if the Commission should put off the test year determination until the revenue requirement phase of this case is over.

3. On January 25, 2008 the DPU is filing testimony on the test period issue. That testimony will provide the evidence the DPU has relied on to make its decision to not propose an alternative test period to what has been proposed by the Company. The DPU is of the opinion that it has conducted a sufficient review to advise the Commission as to its opinion on the appropriate test period. In addition, the testimony provides DPU's position as to when the test period decision could be made. In essence, the DPU has no objection to the PSC making its test period determination at the February hearing. Alternatively, if the Commission does not think it has sufficient evidence to make a test period determination at the February hearings, then it should postpone that decision until the end of Phase I.

4. RMP argues that the Commission cannot meet the statutory finding on test period absent receiving all of the evidence in the case. Section 54-4-4(3)(a) states that the Commission "shall select a test period that on the bases of evidence, the Commission finds best reflects the conditions a public utility will encounter during the period when the rates determined by the Commission will be in effect." RMP argues that without all of the evidence being received by the PSC it cannot decide test period except at the time it establishes "just and reasonable" rates. The DPU does not agree. Section 54-4-4(3) was passed in 2001. It replaced a test year statute that had as its objective the same standard that exists in the current statute. In citing the "wage case," the Supreme Court in reviewing a test year decision made early in the docket under the old statute held that "We agree that one of the fundamental goals in ratemaking is to select a test year that reasonably approximates the rate effective period." *Mountain Fuel Supply Company v. Public Service Commission*, 861 P.2d 414. The Commission under the old statute often

has made its determination on test period prior to its determination of just and reasonable rates. It made its determination after a hearing where evidence was taken on what the appropriate test period should be. In the Supreme Court decision cited above, the Commission Ordered a particular test period at an early stage of the proceeding. The DPU does not believe the new test year statute that is in effect in this case prohibits the PSC from, if it chooses, deciding on test year at a test year hearing prior to receiving all of the evidence. The statute did make some significant changes on test year i.e. no historical test year without known and measurable changes, allowing the utility to go out 20 months from the date of filing as opposed to 12 months, and implementing certain rules if a forecasted test period is not used. However, the DPU does not believe that the statute took away the discretion the PSC has had to decide test year prior to deciding just and reasonable rates at the end of the docket.

5. In conclusion, although the DPU filed a Notice stating that at that time it had not had sufficient time to make a test year decision. It now has filed its testimony on test year and has no objections to the PSC making that decision at the February hearing. If the Commission decides to put off that decision because of insufficient evidence the DPU also has no objections although it would like to point out that the lack of a test year decision will increase the workload of the DPU staff and its consultants.

RESPECTFULLY SUBMITTED, this _____ day of January, 2008.

Michael L. Ginsberg
Patricia E. Schmid
Attorneys for the Division
of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing RESPONSE BY THE DIVISION OF PUBLIC UTILITIES (DPU) TO THE OPPOSITION TO A TEST YEAR HEARING FILED BY ROCKY MOUNTAIN POWER (RMP) DATED JANUARY 22, 2008 was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on January ____, 2008:

Justin Lee Brown, Utah Bar No. 8685
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4050
Facsimile No. (801) 220-3299
justin.brown@pacificorp.com

Gary A. Dodge
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: 801.363.6363
Facsimile: 801.363.6666
Email: gdodge@hjdllaw.com

Daniel Solander, Utah Bar No. 11467
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4014
Facsimile No. (801) 220-3299
daniel.solander@pacificorp.com

Kevin Higgins
Neal Townsend
ENERGY STRATEGIES
39 Market Street, Suite 200
Salt Lake City, UT 84101
Telephone: 801.355.4365
Facsimile: 801.521.9142
E-mail: khiggins@energystrat.com
ntownsend@energystrat.com

Roger Swenson
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
Roger.Swenson@prodigy.net

Lee R. Brown
US Magnesium LLC
238 North 2200 West
Salt Lake City, UT 84116
lbrown@usmagnesium.com

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
PARSONS BEHLE & LATIMER
One Utah Center, Suite 1800
201 S Main St.
Salt Lake City, UT 84111
BobReeder@pblutah.com
BEvans@pblutah.com
VBaldwin@pblutah.com

Roger J Ball
1375 Vintry Lane
Salt Lake City, Utah 84121
(801) 277-1375
ball.roger@gmail.com

ARTHUR F. SANDACK (#2854)
Attorney for Petitioner IBEW Local 57
8 East Broadway, Ste 510
Salt Lake City, Utah 84111
Telephone: (801) 532-7858
asandack@msn.com

F. Robert Reeder
William J. Evans
Vicki M. Baldwin
Parsons Behle &, Latimer
201 South Main Street, Suite 1800
Salt Lake city, utah 84111
bobreeder@parsonsbehle.com
bevans@.parsonsbehle.com
vbaldwin@narsonsbehle.com

Peter J. Mattheis
Eric J. Lacey
BRICKFIELD, BURCHETTE, RITTS & STONE,
P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007
pjm@bbrslaw.com
elacey@bbrslaw.com

Gerald H. Kinghorn
Jeremy R. Cook
PARSONS KINGHORN HARRIS, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378
ghk@pkhlawyers.com
jrc@pkhlawyers.com

Ronald J. Day
Central Valley Water Reclamation Facility
800 West Central Valley Road
Salt Lake City, UT 84119
dayr@cvwrf.org

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
Ph: 513-421-2255 Fax: 513-421-2764
E-mail: mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com

Paul Proctor
Assistant Attorney General
Division of Public Utilities
Heber Wells Building, Suite 500
160 East 300 South
Salt Lake City, UT 84111
pproctorg@utah.gov