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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, 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

**RESPONSE TO ROCKY
MOUNTAIN POWER'S PETITION
FOR CLARIFICATION AND
RECONSIDERATION OF
SCHEDULING ORDER**

The Utah Industrial Energy Consumers ("UIEC"), through counsel, and pursuant to Rule 746-100-11, submit this Response to Rocky Mountain Power's Petition for Clarification and Reconsideration of the Utah Public Service Commission's Scheduling Order issued in this Docket on December 27, 2007, as amended by Order dated January 9, 2008.

Rocky Mountain Power ("RMP" or "Company") states that it seeks clarification of three items: (1) bifurcation of the rate of return or cost of capital (a portion of the application); (2) the implementation of new rates between Phase I and Phase II; and (3) limitations on discovery requests. The UIEC respond as follows:

BIFURCATION OF RATE OF RETURN

Presently, hearing on rate of return or “cost of capital” is scheduled for May 20, 2008. RMP requests the Utah Public Service Commission (“Commission”) to clarify that the hearing will pertain only to the “quantitative calculation of Company’s proposed capital structure,” and that the Company’s witnesses addressing this issue need only be present at the hearing on May 20, 2008. (Petition ¶ 10.) The reason stated by the Company for its request is that the Company intends to present other witnesses who will testify about “certain risk factors and other facts and circumstances” related to capital structure. (Petition ¶ 12.) The Company claims that it wants to avoid presenting this latter testimony on May 20, 2008, and instead, present witnesses who will so testify on June 2–10, 2008, thus, avoiding the necessity of those witnesses appearing twice.¹

(Id.)

If the Company’s request is granted, the parties will be denied their due process because they will be unable to effectively address the rate of return. The parties’ ability to effectively rebut the Company’s case on this issue will be made meaningless if not given the opportunity to have the entire issue presented before replies are due.

RMP’s procedural requests would not only weaken the parties’ ability to provide fully developed and defended cases to the Commission, but would also weaken the Commission’s

¹ The UIEC understand that Company witnesses may be inconvenienced by having to appear at both the May 20, and the June 2–10 hearings. However, the Company’s proposal to alleviate that inconvenience from itself simply serves to impose that same inconvenience on all the other witnesses for all the interveners with a single cost of capital witness. If the Company is allowed to present rate of return (or what it is referring to as cost of capital) testimony at revenue requirement hearings, as it has suggested, the UIEC would find it necessary to have their cost of capital witness present every single day of the revenue requirement hearings. Because, like many other intervener witnesses, the UIEC’s witness likely will be traveling to Utah specifically for this case, it is an enormous burden on interveners to sprinkle cost of capital testimony throughout the revenue requirement hearings. The result would be that important Company testimony on this issue would likely remain unaddressed by the interveners.

ability to carry out its statutory charge to ensure that rates are “just and reasonable.” Thus, the UIEC request that the Commission deny the Company’s request as to this issue.

PHASE II IN THE IMPLEMENTATION OF RATES

In its Petition, the Company has requested that the Commission clarify how it would apply the final revenue requirement in Phase I to customers’ rates while Phase II is pending. The UIEC agree with the Company that the Commission should, as part of Phase I, determine how any revenue requirement increase would be spread before a final order in Phase II is issued. The UIEC believe, however, that the Commission should hear the party’s positions on whether a uniform percentage increase is reasonable or whether some other method should be temporarily implemented pending the outcome of Phase II. It may be the case, for example, that a straight percentage increase might result in discriminatory or preferential rates. (See Utah Code Ann. § 54-7-12(3).)

The UIEC suggest, therefore, that the Commission take evidence and argument from the parties before issuing any order with respect to how the final revenue requirement will be implemented following its order in Phase I.

DISCOVERY PARAMETERS

The Company has filed a complicated case to be effective twenty months in the future, the timing for hearing has been shortened, and now the Company attempts to resist discovery by requesting that the Commission amend its Scheduling Order to restrict the parties ability to submit data requests.

The Company has been preparing this case for several months, and has full knowledge of the particulars of its filing. The other parties, on the other hand, are constrained not only by a

240-day statutory deadline,² but because of simultaneous filings by Questar Gas, that period of time has been shortened by sixty days to allow the Commission to develop its opinions in both cases. The time constraints are burdensome for all of the parties. But that is no reason to deny the interveners due process.

Based on the Commission's procedural rules and long-standing practice before the Commission, the UIEC believe that RMP's request to limit data requests is a premature attempt to have the Commission fashion a scheduling order in anticipation of discovery issues that are not likely to occur. Instead, the UIEC agree with the Division of Public Utilities ("DPU") that the Commission should presume the data requests asked by the parties are in good faith and necessary to conduct the rate case investigation.

The Commission's rules

[E]ncourage[] parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and request for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination.

Utah Admin. Code R746-100-8.A. Furthermore, not only are clarifying, informal, inquiries of the parties, in the form of data requests, encouraged by the Commission, but that same rule also provides the Company with a remedy if parties cannot informally agree on additional time to

² Rate cases before the Commission are not analogous to the oft-cited rules of civil procedure. Civil court cases do not have a statutory completion date, whereby an applicant for relief is awarded full relief if a decision is not rendered within eight months. Thus, RMP's citation to the Utah Rules of Civil Procedure in this instant is inappropriate.

answer certain questions. Providing premature restrictions on the parties' ability to investigate thoroughly the issues raised in the general rate case raises serious due process issues.

The Company retains all of the information in this case. It has had its information for at least a year. It has had several months to put together its case. It knows what it has and has not provided and where that information is within its filing.³ RMP's request for limiting discovery requests should be denied.

DATED this 28th day of January, 2008.

/s/ Vicki M. Baldwin

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³ If the Company believes that it has in fact supplied requested information in its filing or Master Data Requests, the Company should direct the parties where in the initially disclosed information the response to the requests may be found.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2008, I caused to be e-mailed and/or mailed, first class, postage prepaid, a true and correct copy of the foregoing **RESPONSE TO ROCKY MOUNTAIN POWER'S PETITION FOR CLARIFICATION AND RECONSIDERATION OF SCHEDULING ORDER**, to:

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