Gary A. Dodge, #0897
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101
Telephone: 801-363-6363
Facsimile: 801-363-6666
Email: gdodge@hjdlaw.com
Attorneys for UAE

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** **POST-HEARING MEMORANDUM OF UAE INTERVENTION GROUP RE: TEST PERIOD**

The UAE Intervention Group (UAE) submits this post-hearing memorandum in support of its position that the test period that best reflects the conditions that Rocky Mountain Power (RMP) is likely to face during the rate effective period, and that best balances the competing interests and risks of RMP and its ratepayers, is a calendar year 2008 test period. If the Commission has concerns over the ability of RMP to make appropriate data for a 2008 test period available on a timely basis[1], UAE submits that the "Mid-Period" test period ending June 30, 2008, should be selected as the one that best reflects the expected conditions during the rate-effective period.

I. The Projected Test Period Proposed by RMP is the Most Extreme Test Period Possible under Utah Law and Represents a Radical Departure from Past Commission Practice.

For many years, the Commission has adopted an aggressive, yet reasonable, pro-customer posture with respect to test periods. By using an historical test period with limited out-of-period adjustments, the Commission opted for the use of actual, verifiable data that is synchronized and balanced and that creates strong incentives for utility efficiency. The result has been utility rates that are among the lowest in the country, as well as financially healthy utilities.

The primary test period options used historically or available today are as follows:

- 7/06 - 6/07 - An historical test period with little or no out-of-period adjustments. This was the Commission's preferred test period for decades, and it prevailed during periods of both increasing and decreasing costs. The utilities supported legislation in 2003 to outlaw the use of this preferred test period.

- 7/06 - 6/07 - An historical test period with adjustments that are "close in time to the test period" and that are "known in nature" and "measurable in amount." This test period, which is expressly permitted by Utah law, represents RMP's "Base Period."

- Calendar year 2007 - A "mixed" test period based on actual results of operation through June 30, 2007, and projected data through December 31, 2007. This test period is also expressly permitted by Utah law.

- 7/07 - 6/08 - A projected test period that ends approximately 7 months after the filing date. This test period represents RMP's "Mid Period" and is supported by UIEC and by UAE (as an alternative proposal).

[1] UAE submitted a data request asking for 2008 Revenue Requirement data on January 25, 2008. The DPU submitted a similar data request even earlier. The utility has no justification for not having already provided this data and should not be rewarded for its tactical refusal to answer relevant data requests.

- Calendar year 2008 - A projected test period that ends approximately 13 months after the filing date. This test period resembles the most aggressive test period permitted under Utah law until 2003. This test period is UAE's primary recommendation, as it best reflects the conditions the utility will encounter and it represents a reasonable balancing of risks and interests between RMP and its ratepayers.

- 7/08 - 6/09 - A projected test period that ends nearly 19 months after the filing date. This test period uses the most extreme projections permitted by Utah law and has only been available for consideration since 2003. This is the Company's test period proposal.

Through legislation in 2003, the utilities stripped the Commission of its preferred test period option and added one additional option to be considered -- a test period using aggressive projections up to 20 months from the filing date. RMP is now attempting to institutionalize the most aggressive test period permitted under Utah law as the presumptive test period. RMP is thus promoting a radical movement in Utah from the most conservative test period in the country to one of the most extreme. RMP has succeeded in convincing certain parties to defer to its extreme test period projections instead of supporting a reasonable balancing of risks and rewards between the utility and its customers. This radical departure from precedent is not warranted as a matter of fact and not prudent as a matter of policy. UAE submits that a more balanced, reasonable approach is necessary in order to assure just and reasonable rates.

II. The Extreme Projections Urged by RMP Cannot Be Justified Based Upon the Tautological Argument that the Future Best Reflects the Future.

The primary justification offered by RMP for its extreme test period proposal is that it most closely aligns in time with the first twelve months after new rates are expected to go into effect. This argument, if accepted, would virtually assure that an extreme (20-month) test period would be mandatory under nearly every conceivable circumstance. The legislature carefully articulated that other test periods should be given equal consideration, and can properly be selected by the Commission.[2] The legislature also emphasized that there should be no presumption in favor of one test period over another.[3] RMP's argument that its extreme projections are "most representative" of the rate effective period because they are closest in time to the twelve months after the rate effective date will always hold true. If this argument were accepted as the primary determinant of test period as argued by RMP, and to which the Division of Public Utilities (DPU) and Committee of Consumer Services (CCS) seem resigned, it would create an almost-irrefutable presumption in favor of the most extreme possible test period in every case and make a mockery of the statutory language and legislative intent.

III. The Commission's Previously-Articulated Concerns Regarding Test Period Adjustments and Projections Support the Use of a Less Aggressive Test Period.

Following the passage of the 2003 statute, this Commission identified a number of concerns with out-of-period adjustments and projections, including the following.

- *Possible bias and lack of complete information about offsetting adjustments*
- *Company's unequalled access to financial and accounting information*
- *Shifting of risks to ratepayers of the uncertain future as management action may offset the effects of regulatory adjustments*
- *Diminished economic examination and accountability*
- *Replacement of actual results of operations data with difficult-to-analyze projections*
- *Ability of parties to effectively analyze the Company's forecasts*
- *Dampening of the efficiency incentive of regulatory lag*

[2] Utah Code Section 54-4-4(3).

[3] "The intent of the legislature in passing S.B. 61, Public Utility Related Amendments, is to have the Public Service Commission select a test period for setting utility rates based on the best evidence presented to the Public Service Commission without any presumption for or against either a historical or a future test period." Senate Journal,

- *Playing to the Company's strength from control of critical information*
- *Shifting of risks of the future to ratepayers*

Order Approving Test Period Stipulation, issued October 20, 2004, Docket No. 04-035-42, at 5-6. Each of these is still a legitimate concern that supports the use of less aggressive test period projections. These concerns suggest that the Commission should be slow to move away from the use of more accurate and verifiable data in favor of extreme projections as suggested by RMP. These concerns support the use of a test period ending June 30, 2008, that uses actual and forecasted data, or a test period that confines projections to calendar year 2008. Given that the hearings in this docket will occur in mid-2008, projections for either of these periods can be analyzed and verified with much more confidence. Indeed, many 2008 assumptions can be compared with actual 2008 conditions at the time of the hearings.

IV. The Factors Identified by the Commission as Relevant to a Determination of Test Period Support the Use of a Less Aggressive Test Period.

The Commission's 2004 Order in Docket 04-035-42 also identified a number of factors that should be considered in determining the appropriate test year under the new statute, including the following:

1. The test period should balance the utility's investment, revenues and expenses so that all elements of the rate case are matched on the same level of operations. This factor will generally be neutral with respect to a test period other than one that uses out-of-period adjustments. All other test periods permit a proper balancing of investments, expenses and revenues. In this case, however, this factor supports a less aggressive test period given the stated position of the DPU and CCS to "not oppose" RMP's extreme test period because they believe

Tuesday, February 19, 2003, Day 30, page 515, Intent Language to S.B. 61; House Journal, Tuesday, March 4, 2003, Day 44, page 961, Intent Language for S.B. 61.

they can adjust dates backwards when appropriate. To the extent data is adjusted backwards in some, but not all, areas, the same balancing concerns arise as with the use of out-of-period adjustments.

2. ***The general level of inflation*****.** This factor supports a less aggressive test period. Inflation has remained largely in check for many years and the projected 2008 recession increases the likelihood of even lower inflation levels this year. Moreover, by adopting inflation projections in setting rates, ratepayers are forced to pay rates based on the assumed level of inflation regardless of the actual levels.

3. Changes in the utility's investment, revenues or expenses. This factor would typically support a more aggressive test period, given the level of RMP's projected capital investments. However, the fact that RMP must now play "catch-up" after many years of inadequate capital investments in distribution, generation and transmission assets should not serve as a basis for rewarding the utility and penalizing its customers. With prudent utility planning, RMP would not now be in the position of being so short on needed facilities. To reward RMP's long inaction with extreme test period projections would penalize ratepayers for imprudent utility planning.

4. Changes in utility services. This factor weighs in favor of a less aggressive test period. RMP is not projecting any significant level of new services that would support the use of extreme test period projections.

5. Availability and accuracy of data to the parties. This factor strongly supports a less aggressive test period. While RMP agreed to file sufficient data to permit a test period evaluation early in the process, the utility will always have unequal access to, and an overwhelming degree of control over, data relevant to the proceeding. The further out the utility is permitted to project, the greater its data advantage.

6. Ability to synchronize the utility's investment, revenues and expenses. As with the first factor discussed above, this factor will generally be neutral for any test period that does not rely upon out-of-period adjustments. This factor supports a less aggressive test period in this case because the DPU and CCS have both declared their intentions to adjust certain data points to earlier dates, thus raising synchronization issues.

7. Whether the utility is in a cost increasing or cost declining status. The utility projects increasing costs and, as with the third factor discussed above, this might normally favor the use of more aggressive projections. However, this factor should not become a reward for utility procrastination or a tool for shifting of risks to ratepayers.

8. Incentives to efficient management and operation. This factor strongly favors a less aggressive test period. While a utility will always have an incentive to pursue efficiencies beyond those assumed in setting rates, the efficiency benefits will be shared between the utility and its ratepayers in-between rate cases only if a certain level of assumed efficiency is built into rates through the use of closer-in-time data or projections.

9. Length of time the new rates are expected to be in effect. This factor weighs in favor of a less aggressive test period. Rocky Mountain Power has made no secret of its intent to file annual rate cases. Given that expectation, there is no need for the use of extreme or unreliable projections.

The great weight of record evidence in this docket addressing the factors identified by the Commission as relevant to a test period determination supports the use of a less aggressive test period than the one proposed by the utility. UAE respectfully submits that the evidence overwhelmingly supports the use of a test period ending either June 30 or December 31, 2008.

V. The Use of Less Extreme Test Period Projections Balances the Competing Interests of the Utility and its Ratepayers.

The risk of variances between data used in setting rates and actual values is often referred to as "regulatory lag." This risk has been borne by Utah utilities for decades. While the utilities complained mightily about regulatory lag, they are and have remained quite healthy. The utility is now attempting to shift the risk of regulatory lag almost completely to its customers. UAE submits that, rather than forcing either the utility or its ratepayers to shoulder the entirety of this burden, the risks should be balanced between them. A Mid-Period or 2008 test period offers a reasonable balancing of these risks between RMP and its ratepayers.

Moreover, the returns on equity authorized by this Commission for Utah utilities have presumably been based, among other things, on the risks faced by the utilities, including the risk of regulatory lag. To the extent RMP succeeds in shedding any part of this risk through the use of a test period other than an historical test period, this reduced level of risk should be factored into the determination of the utility's authorized return on equity.

UAE submits that a proper consideration of the relevant evidence, and a proper balancing of risks between the utility and its ratepayers, supports the use of a less aggressive test period in this case than the test period proposed by RMP.

DATED this 13th day of February, 2008.

____

Gary A. Dodge,
Attorneys for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 13th day of February, 2008, to the following:

Justin Lee Brown
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
justin.brown@pacificorp.com

Daniel Solander,
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
daniel.solander@pacificorp.com

Michael Ginsberg
Patricia Schmid
ASSISTANT ATTORNEY GENERAL
500 Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111
mginsberg@utah.gov
pschmid@utah.gov

Paul Proctor
ASSISTANT ATTORNEY GENERAL
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
rwarnick@utah.gov
pproctor@utah.gov

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
Ball.roger@gmail.com

Lee R. Brown
US Magnesium LLC
238 N. 2200 W
Salt Lake City, UT 84116
Lbrown@usmagnesium.com

ARTHUR F. SANDACK
8 East Broadway, Ste 510
Salt Lake City, Utah 84111
asandack@msn.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
ghk@pkhlawyers.com

Steven S. Michel
Western Resource Advocates
2025 Senda de Andres
Santa Fe, NM 87501
smichel@wcstcrnresources.org

Michael L. Kurtz
Kurt J. Boehm
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com

Stephen F. Mecham
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
sfmecham@cnmlaw.com

Dale F. Gardiner
Van Cott, Bagley, Cornwall & McCarthy
36 South State Street, Suite 1900
Salt Lake City, Utah 84111
dgardiner@vancott.com