

Mark C. Moench (2284)
Daniel E. Solander (11467)
Rocky Mountain Power
201 South Main St., Suite 2300
Salt Lake City, UT. 84111
(801) 220-4459 (Moench)
(801) 220-4014 (Solander)
(801) 220-3299 (Fax)
mark.moench@pacificorp.com
daniel.solander@pacificorp.com

Katherine A. McDowell
Lisa F. Rackner
Admitted Pro Hac Vice
McDowell & Rackner P.C.
520 SW 6th Avenue, Suite 830
Portland, OR 97204
503-595-3924 - telephone
503-595-3928 - facsimile
katherine@mcd-law.com
lisa@mcd-law.com

Attorneys for Rocky Mountain Power

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

**ROCKY MOUNTAIN POWER'S
RESPONSE TO THE OBJECTION TO
THE PRESENTATION OF
SUR-SURREBUTTAL TESTIMONY AND
EXHIBITS**

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Admin. Code R746-100-3.I.2, hereby submits this Response to the Objection to the Presentation of Sur-Surrebuttal Testimony and Exhibits (“Response”) to the Public Service Commission of Utah (“Commission”).

On May 30, 2008, the Committee of Consumer Services (“CCS”) filed an Objection to the Presentation of Sur-Surrebuttal Testimony and Exhibits with the Commission. Rocky Mountain Power had provided the Commission notice on May 27, 2008 that it intended to present sur-surrebuttal testimony and exhibits at the revenue requirement hearing commencing on June 2, 2008. Rocky Mountain Power filed this notice because at the Scheduling Conference on December 20, 2007, the parties to this docket agreed that in addition to the round of written direct and rebuttal testimony provided for in the Commission’s rules, intervening parties would file an additional round of written surrebuttal testimony. The parties agreed that because the surrebuttal testimony would be filed only five business days before the hearing, the Company would present live sur-surrebuttal testimony at the hearing. CCS did not object to this plan at the Scheduling Conference.

The parties agreed on a similar schedule for the rate of return phase of the hearing. Rocky Mountain Power filed a notice that it would be presenting sur-surrebuttal testimony at the rate of return hearing to be held May 20, 2008. No party objected to this notice or to the Company’s presentation of sur-surrebuttal testimony at that hearing. In Dr. Hadaway’s testimony at the hearing, the Company also offered a sur-surrebuttal exhibit which was received without objection.

CCS’s objection is deficient on a number of bases. First, the parties at the Scheduling Conference, including CCS, discussed the Company’s presentation of live sur-surrebuttal testimony. It is disingenuous for CCS to now state that the Scheduling Order of December 27, 2008, does not expressly contemplate the presentation of such testimony and exhibits when CCS agreed to this concept at the hearing. The Company would not have agreed to a round of surrebuttal testimony without a chance to respond to that testimony. The fact that the Scheduling Order does not explicitly state that live sur-surrebuttal testimony would be presented at the hearing is irrelevant—the Scheduling Order also does not state that cross examination will be conducted at the hearing, but no party disputes that such testimony is proper.

Second, the Commission's rule on the order of presentation of evidence implies the presentation of sur-surrebuttal testimony where intervening parties have had an opportunity for surrebuttal testimony. Pursuant to Utah Administrative Rule R746-100-10.J, unless otherwise ordered by the presiding officer, an applicant presents its case in chief, followed by other parties, followed by the proposing party's rebuttal. In this proceeding, Rocky Mountain Power filed its case in chief, other parties presented testimony, and Rocky Mountain Power had its opportunity for rebuttal pursuant to Rule R746-100-10.J. The other parties then received an additional opportunity to present evidence after Rocky Mountain Power's rebuttal. Rule R746-100-10.J is reasonably interpreted to mean that the Company has a chance to respond to other parties' surrebuttal testimony in this case.

Third, it would be unjust to not allow Rocky Mountain Power a chance to respond to surrebuttal testimony. The Company bears the burden to demonstrate that its proposed rate increase is reasonable. *Div. of Pub. Util. v. Pub. Serv. Comm'n*, 614 P.2d 1242 (Utah 1980). Limiting the Company's presentation of sur-surrebuttal evidence at this stage of the proceeding when the Company reasonably relied on the fact that it would be allowed to respond to the other parties' surrebuttal testimony would unjustly limit the Company's opportunity to present its case.

Fourth, CCS's objection to the sur-surrebuttal testimony and exhibits as "undisclosed" is without merit. On May 30, 2008, Rocky Mountain Power sent a letter to all parties of record in this docket supplementing its May 27 notice of sur-surrebuttal testimony and exhibits. The Company's letter, a copy of which is attached hereto, lists the witnesses with respect to whom the Company plans to offer sur-surrebuttal testimony. Attached to the letter were the five sur-surrebuttal exhibits that the Company intends to offer into evidence at the hearing. Given that intervening parties filed surrebuttal testimony and exhibits only four business days earlier, Rocky Mountain Power identified its sur-surrebuttal witnesses and exhibits as quickly as possible.

Fifth, Rocky Mountain Power's presentation of sur-surrebuttal at the hearing will be brief and limited to specific responses to new points raised by intervening parties in surrebuttal

testimony. The Company's presentation of this limited evidence will not result in a prolonged hearing as CCS alleges. If at the hearing the Commission Chair determines that the Company's presentation is too long or is not limited to a response to surrebuttal testimony, the Chair has the discretion to limit the presentation. Rocky Mountain Power should not, however, be precluded from presenting sur-surrebuttal testimony and evidence as contemplated by the Commission's rules and the parties as agreed at the Scheduling Conference.

Finally, it is to the benefit of the Commission to have a more complete record upon which to base its decision. The Company's limited sur-surrebuttal will assist the Commission's decisionmaking rather than detract from the process.

Rocky Mountain Power respectfully requests that the Commission overrule the CCS' objection to the presentation of sur-surrebuttal testimony and exhibits and allow the Company to present the testimony and exhibits noticed in its May 27, 2008 Notice filed in this case and described in detail in Rocky Mountain Power's notice to the parties.

RESPECTFULLY SUBMITTED: June 2, 2008.

Daniel E. Solander
Attorney for Rocky Mountain Power