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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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**

**UAE INTERVENTION GROUP'S  
RESPONSE TO ROCKY  
MOUNTAIN POWER COMPANY'S  
PETITION FOR  
RECONSIDERATION**

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Pursuant to Rule R746-100-11 E, Utah Administrative Code, the UAE Intervention Group (“UAE”) submits this response and opposition to the Petition for Reconsideration (“Petition”) filed by Rocky Mountain Power (“RMP”) herein. In this Response, UAE will demonstrate that: (i) the Commission duly considered RMP’s test period evidence and arguments; (ii) the Commission properly rejected delinquent attempts by RMP to interject new and prejudicial testimony, exhibits, issues and projections into the proceeding; and (iii) RMP’s Petition misstates Utah regulatory policy and this Commission’s ratemaking obligations.

**I. The Commission’s Test Period Order is Well Supported and Gave Due Consideration to RMP’s Arguments and Evidence.**

RMP asks for reconsideration of the Commission’s test period order on the basis that the Commission allegedly failed to “properly consider” the utility’s evidence on this issue. In reality, RMP is simply complaining that the Commission did not agree with its position. Considering and rejecting a party’s evidence is not the same thing as failing to properly consider it. It is obvious from the record that the Commission was well aware of and adequately considered the utility’s evidence and arguments, but that it gave them less weight than the evidence and arguments submitted by others. Indeed, the Test Period Order specifically states: “In determining an appropriate test period for this docket, we consider the testimony of the Company ...” Order on Test Period, February 14, 2008, at 1-2. The Order also references the Company’s testimony in other places. *E.g., id.* at 2-3. It is disingenuous to suggest that the Commission failed to properly consider the company’s evidence, as opposed to disagreeing with it.

The primary basis for RMP’s demand for the most extreme test period permitted under Utah law is that it most closely aligned in time with the twelve month period beginning when new rates took effect. Under this tautological argument, the most extreme permissible test period would be mandatory. The utility’s argument is directly contradicted by the express statutory directive that the best test period is to be selected “based on the evidence”<sup>1</sup> and the express legislative intent not to create any presumption for or against any permissible test period.<sup>2</sup>

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<sup>1</sup> Utah Code Section 54-4-4(3).

<sup>2</sup> “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, 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.

The Commission carefully weighed all relevant testimony and arguments presented by the parties and selected the test period that, based on that evidence, would best reflect the conditions that RMP will encounter during the rate effective period. RMP's Petition for Reconsideration on this issue is nothing more than a rehashing of its unpersuasive and illogical arguments, which should again be rejected.

## **II. The Commission Properly Rejected RMP's Efforts to Introduce Prejudicial New Evidence and Issues Late in the Proceeding.**

Many of RMP's arguments for rehearing rely on its claim that the Commission improperly limited the scope of last-minute testimony and exhibits offered by RMP. UAE did not file evidence or take positions on all of the specific issues that would have been directly addressed by RMP's delinquent evidence. However, UAE, along with all other intervenors, would have been severely prejudiced had the utility been permitted to make significant last-minute adjustments and changes to its filed case.

RMP's Petition fails to recognize that the utility is in a unique position that is very different from the intervenors. It controls the timing of its filing, bears the burden of proof and is protected by a statutory 240-day deadline to complete the regulatory process. The utility is required to file a complete rate case application with ample support for all elements of its filing, including support for its projections, specific notice of any changes proposed by the utility from past practices and Commission orders, and full and complete Schedules that can properly take effect 240 days later. *E.g.*, Utah Code Ann. §§ 54-3-3; 54-7-12(2)(a), (b), (c), 12(3); 63G-4-201(3)(a); *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1242, 1245-46 (Utah 1980); Utah Admin. Code Rules R746-405-2.A.3, R746-405-2.D.3. The utility cannot file new testimony, exhibits or projections late in the game over reasonable

objections of intervenors who have spent considerable time and effort analyzing the utility's initial filing. Within the time frames adopted by the Commission in scheduling orders, the utility can properly respond to positions, arguments and adjustments proposed by intervening parties. However, it cannot properly introduce new positions, projections or numbers into the proceeding late in the game in a manner that unfairly prejudices the intervenors.

The Commission, like any court or adjudicative body, has broad discretion to exclude duplicative, late-filed or prejudicial testimony or exhibits. Rule 403, Utah Rules of Evidence; *See Utah Code § 63-46b-8; Mountain Fuel Supply Co. v Public Service Commission*, 861 P.2d 414, 423 (Utah 1993). The Commission properly exercised that discretion in excluding extensive sur-surrebuttal testimony and exhibits, inadvertently omitted electric swaps and indexed gas transactions and new forward price curves offered by the utility very late in the process. Other parties simply did not have sufficient time to analyze or respond to such evidence and it was properly excluded. Indeed, had it been introduced, the other parties would have been entitled to additional time and further rounds of discovery and testimony, and the 240-day deadline would have to have been extended accordingly.

### **III. RMP's Petition Misstates Utah Law and Commission Obligations Re Ratemaking**

RMP's Petition makes repeated and inaccurate overstatements about Utah laws and Commission obligations in setting rates. For example, the Petition incorrectly argues that the Commission must allow it to introduce evidence of known and measurable net power cost changes in light of the test period order. (Petition at 2). The test period statute relied upon by RMP for this erroneous argument, Utah Code § 54-4-4(3)(c), does not support the utility's argument. That statute addresses test period issues only. It offers three test period options, two of which involve an

historical period. The third option utilizes a projected period. If one of the two test period options involving an historical period is adopted, the statute requires the Commission to consider known and measurable changes that occur close in time to the test period. In this case the Commission adopted a fully-projected test period and the referenced provision is thus not applicable.

Even ignoring RMP's improper effort to twist the test period statute into relevance, at most the statute requires the Commission to *consider* known, measurable and close-in-time changes that occur *outside the test period*. The net power cost adjustments assailed by RMP in its Petition did not occur outside the test period (calendar year 2008). Moreover, nothing in the statute requires the Commission to accept any particular adjustment.

RMP also argues that Utah legislative policy requires that "rates" must reflect conditions during the rate-effective period. ( Petition at 2). Trumpeting this overstated premise, RMP argues that Utah's statutory policy is to "allow a utility to establish rates that best reflect the conditions in the rate-effective period" (*id.* at 12) and "to see that rates for public utilities reflect, as much as possible, conditions that will exist during the rate-effective period" (*id.* at 15), and that the "Commission must determine amounts the Company will expend during the period the rates will be in effect" (*id.* at 25). RMP's arguments twist the language of the test period statute in an inappropriate manner. No such Commission prescience is mandated or expected.

The test period statute requires that, *in picking a test period*, the Commission is to select the test period that, based on the evidence, will best reflect expected conditions during the rate-effective period. The Commission fully satisfied this requirement. As discussed above and in greater detail in UAE's test period testimony and brief, that statutory directive does not require the Commission to pick a projected test period just because it lines up more closely with the first twelve months of the expected rate-effective period. The statute expressly authorizes historical test periods and mixed

historical/projected test periods and creates no presumption in favor of any particular test period. Similarly, the statute imposes no obligation on the Commission to try to predict the utility's actual expenditures at any given point in time.

Under Utah's long-established regulatory scheme, which applies regardless of the test period selected, the Commission typically considers historical costs and revenues and predictions of future costs and revenues. Based on that information, the Commission arrives at rates reasonably projected to cover prudently-incurred costs and a fair return. *See, e.g., Utah Department of Business Regulation v. Public Service Commission*, 720 P.2d 420,420 (Utah 1986); *Utah Department of Business Regulation v. Public Service Commission*, 614 P.2d 1242, 1248 (Utah 1980). The test period statute does not change this regulatory scheme nor require the Commission to determine actual levels of revenue or expenditures. Indeed, any such effort would be doomed to failure. The Commission is expected, based upon the record established, to set just and reasonable rates reasonably designed to permit the utility to operate its business reasonably and prudently and in the public interest. RMP should not be permitted to misuse the language of the test period statute to overstate or create new regulatory burdens or obligations.

### **Conclusion**

UAE respectfully submits that RMP's Petition for Reconsideration should be denied to the extent it is based upon the test period selected by the Commission, the Commission's exclusion of late-filed testimony, exhibits and projections, or any alleged failure of the Commission to try to determine actual revenues or expenses that the utility will encounter.

DATED this 17<sup>th</sup> day of September, 2008.

/s/ \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 17<sup>th</sup> day of September, 2008, to the following:

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