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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PacifiCorp, by and through its Rocky Mountain Power Division, for Approval of a Solicitation Process for a Flexible Resource for the 2012-2017 Time Period, and for Approval of a Significant Energy Resource Decision	<u>DOCKET NO. 07-035-94</u> RESPONSE AND OPPOSITION OF THE UTAH ASSOCIATION OF ENERGY USERS TO PACIFICORP'S PETITION FOR RECONSIDERATION, REVIEW OR REHEARING
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Pursuant to Rule R746-100-11 F, the Utah Association of Energy Users (“UAE”) submits this response and opposition to the Petition for Reconsideration, Review or Rehearing (“Motion for Rehearing”) submitted in this matter by Rocky Mountain Power (“RMP”).

INTRODUCTION

RMP’s Motion for Rehearing should be denied. The Commission’s Suggested Modifications and Order dated May 23, 2008 (“Commission Order”) properly and thoroughly analyzed and resolved the issues raised by RMP and no further hearing or reconsideration is necessary or appropriate. Moreover, the Motion for Rehearing improperly suggests that this

Commission should abandon to other states its jurisdiction over PacifiCorp's resource planning and procurement decisions for ratepayers located within the State of Utah. Decisions by other states to restrict the types of resources that RMP may use to serve customers in those states cannot change the obligation of RMP to provide, or the jurisdiction and responsibility of this Commission to ensure, lowest cost resources for residents of Utah.

RMP argues that the Commission should surrender its jurisdiction to Washington and California because of the Commission's historical support of system-wide resource planning and operation. System-wide planning and operation is not the requirement or the goal, but rather a tool designed to help achieve least-cost resources. The acquisition of lowest-cost, least-risk, reliable electric service for the State of Utah is the utility's statutory obligation and the Commission's oft-repeated goal.

No Utah statutes, regulations or policies, Commission Orders or sound public policies support RMP's effort to persuade this Commission to abandon its statutory obligations to the citizens of Utah. Indeed, Utah statutes and Commission Orders uniformly require RMP to acquire least-cost resources for the benefit of Utah ratepayers. The Commission Order properly recognizes this requirement; RMP's Motion for Rehearing should be denied.

DISCUSSION

I. The Motion for Rehearing Suggests that this Commission Should Surrender Utah's Resource Planning Authority to Other States.

The Motion for Rehearing urges this Commission to surrender to other states its jurisdiction over RMP's resource planning and procurement decisions for ratepayers located in Utah. This, the Commission cannot and must not do. RMP is regulated in Utah for the benefit

of its Utah ratepayers. (Utah Code §§ 54-4-1, 54-4-25, 54-17-101, et seq.). The fact that other states may elect to dictate the nature or type of resources that RMP must use to serve customers located in those states does not and cannot impinge upon the mandate of RMP to ensure the most cost effective resources for the residents of Utah.

RMP attempts to boot-strap its argument that the Commission should surrender its jurisdiction to Washington and California by pointing to this Commission’s historical support of system-wide resource planning and operation. RMP has it backwards. The Commission’s consistent *goal* has always been lowest-cost, least-risk, reliable electric service in Utah. System-wide planning and operation is a *tool*, promised by PacifiCorp and relied upon by the Commission, to help achieve that goal. The tool does not trump the goal. RMP cannot cite to a single Utah law, regulation or Commission order that requires RMP to adhere to “system-wide” planning at the expense of least-cost resources or the public interest of Utah residents.

II. The Tool of System-Wide Planning and Operation Does Not Trump the Goal of Lowest-Cost Resources.

The Commission has historically supported system-wide resource planning and operation largely because PacifiCorp promised when it acquired Utah Power & Light Company that such planning and operation would be in the public interest of the State of Utah in that it would produce lower rates. RMP cannot now bootstrap its own promise into a constraint on the Commission’s ability to perform its statutory duty to protect the public interest of the State of Utah.

Reduced costs stemming from system-wide diversity and planning represented the primary incentive offered by PacifiCorp to convince the Commission to permit the largest Utah

electric utility to be swallowed up by a northwest utility. PacifiCorp promised that system-wide efficiencies and planning would bring lower costs to Utah. The Commission approved the sale on that premise and has steadfastly held PacifiCorp to its promise to deliver benefits from the acquisition to Utah ratepayers in the form of lower rates. Never before has anyone suggested that the system-wide planning tool promised by PacifiCorp would require Utah to abandon its goal of lowest-cost resources or surrender to other states its sovereignty over Utah regulatory policy.

RMP's argument turns the policy supporting system-wide planning on its head. System-wide planning does not give each state the unilateral right to dictate resource decisions or to veto a category of resources for the entire system as now suggested by PacifiCorp. Rather, system-wide planning requires PacifiCorp to pursue and acquire an optimal mix of resources which will deliver the lowest reasonable cost to all states, after consideration of risk, reliability and other relevant factors. (*See* Utah Code § 54-17-302(3)(c)). If individual state policies impose higher costs on the system -- such as through renewable portfolio standards, other resource preferences or retail access -- the higher costs should be assigned to the state(s) responsible for them. It has never before been contemplated that system-wide planning and operation should allow any state to dictate resource decisions and force higher costs onto other states.

PacifiCorp's obligation is to use system-wide planning and operation to ensure lowest-cost resources for Utah, even in the face of requirements of other states that may impose certain constraints or higher costs. To ensure full cost recovery, RMP must then work with the MSP Standing Committee, this Commission, and other state commissions in an effort to require the state(s) imposing the extra costs to bear the same.

RMP suggests that it “cannot legally acquire” coal resources as system-wide resources. RMP has made no showing before this Commission that the California and Washington laws cited by RMP make it *illegal* for RMP to acquire coal resources. In any event, there is limited value in debating in this State the legal import of Washington and California laws. They clearly cannot impact RMP’s legal obligation to procure for the benefit of its Utah ratepayers lowest-cost resources, even if those resources cannot be used to serve customers in certain other states or the acquisition of such resources may put RMP at risk of not collecting some costs from other states. No other state can dictate the resources to be used to serve Utah ratepayers. The Commission Order properly refused to surrender to the legislature or commission of any other state the resource policy decisions that will drive costs for Utah residents for decades. Rehearing is not warranted.

RMP also claims, without support, that it “does not currently have the option to unilaterally move away from system-wide planning.” (Motion for Rehearing at 14). In fact, RMP has no option under Utah law but to acquire those resources that will produce the “lowest reasonable costs” for Utah ratepayers, after taking into consideration risk, reliability and other relevant factors. (Utah Code § 54-17-302(3)(c)). PacifiCorp cannot discharge this statutory mandate unless all technically feasible resource options are actively and fairly solicited and evaluated in the public process statutorily required by Utah law.

III. PacifiCorp is Attempting to Shift to Utah Ratepayers its Risk of Inconsistent State Cost Allocation Policies.

Despite its weak claim to the contrary, RMP is clearly attempting to shift to Utah ratepayers, and away from its shareholders, the risk of inconsistent state cost allocation decisions

and policies. This is the very risk that the Commission has consistently required PacifiCorp to bear, beginning with the September 28, 1988, Commission Order approving PacifiCorp's acquisition of Utah Power & Light Company, reiterated in the November 23, 1990, Order approving the acquisition of PacifiCorp by Scottish Power and confirmed in the MSP Order issued on December 14, 2004.¹ PacifiCorp is statutorily obligated to pursue lowest-cost, risk-adjusted resource acquisition for the benefit of Utah ratepayers, regardless of any conflicting resource policies or requirements of other states. This requirement stands notwithstanding the risk of potential costs or restrictions imposed by other states. These risks, which are ultimately PacifiCorp's to bear, must be addressed in another context.

IV. The Commission's IRP Orders Do Not Support RMP's Argument that the Commission Should Defer Resource Planning Policy to Other States.

In a vain effort to find support for its argument that the States of Washington and California should be permitted to dictate resource policy decisions for Utah, RMP selectively quotes from past Commission IRP orders, suggesting that such orders require "integrated, single-system planning." (Motion for Review at 3). In fact, those orders require "least-cost" planning and operation.

¹ RMP notes in a footnote that the Commission Order approving the acquisition of PacifiCorp's stock by MidAmerican Energy Holdings Company ("MEHC") does not restate PacifiCorp's agreement and obligation to bear the risk of inconsistent state allocation decisions. (Motion for Rehearing at 10, n.5). It is not clear what RMP is suggesting in that footnote, but it was not necessary for that requirement to be repeated in the MEHC approval order because it is an obligation squarely placed on PacifiCorp. PacifiCorp was and remains the certificated monopoly service provider in most of Utah; its stock merely changed hands. PacifiCorp cannot evade its commitments and obligations to the State of Utah because its stock is sold to a new owner. MEHC must accept ownership of PacifiCorp with all of its benefits and burdens. The requirement that PacifiCorp must accept the risk of inconsistent state cost allocation decisions is a very significant ratepayer protection that cannot be evaded by PacifiCorp's new owners.

RMP cites the Commission’s 1992 Report and Order adopting IRP Standards and Guidelines as endorsing “integrated, system-wide planning.” (Motion for Rehearing at 3). RMP fails to note that the emphasis of the Commission’s 1992 Order was on *lowest-cost*, reliable, least risk resources. Indeed, the Commission confirmed in that Order that integrated resource planning is a tool designed to ensure that the electric requirements of Utah ratepayers will be met “*at the lowest total cost* to the utility and its customers, and in a manner consistent with the long-run public interest.” (Report and Order on Standards and Guidelines, June 19, 1992, UPSC Docket No. 90-2035-01, at 17) (Emphasis added). The Commission also emphasized that the IRP process “should result in the selection of the optimal set of resources given the expected combination of *costs*, risk and uncertainty.” (*Id.*) Moreover, the IRP Standards and Guidelines themselves explicitly require evaluation by PacifiCorp of “all technically feasible generating technologies.” (*Id.* at 23). This mandate requires thoughtful evaluation of all technically-feasible generating resources, including coal, regardless of resource policy preferences of other states.

With twisted logic, RMP attempts to re-direct the goal of the IRP orders away from *least-cost* resource planning to system-wide resources planning at any cost. The IRP planning process and Commission orders regarding the same have always focused on ensuring lowest-cost, least risk, reliable service. They give no solace to the argument that other states can make policy choices that impose higher costs on Utah ratepayers.

RMP also selectively quotes from a 2002 IRP Order as requiring “integrated, single-system” operation. Again, RMP omits that the 2002 Order directed the Company to file an action plan based on an integrated, single-system, *least-cost* operation.” (Report and Order, February 28, 2002, UPSC Docket No. 98-2035-05, at 13). The value of single-system planning

and operation is only in its potential ability to deliver least-cost resources to Utah. RMP misrepresents the intent and import of the Commission's orders in an attempt to twist the *tool* of single-system planning and operation into a mandate that overrides the *goal* of lowest cost resources.

V. Utah Statutes Do Not Support RMP's Argument that Utah Should Delegate Its Resource Policy Decisions to Other States.

RMP's vain effort to find support for its untenable position that California and Washington should be permitted to control Utah's resource policy decisions also leads it to cite a provision in the Energy Resource Procurement Act, Utah Code § 54-17-101, et seq. ("Act"), that *permitted* the Commission to *consider* the impact of multi-state regulation in drafting rules to implement the Act. The Commission did consider multi-state implications in drafting those rules; that is the end of it. The Act clearly does not say or suggest that the Commission should surrender the State's sovereignty to other states. Moreover, it specifically mandates that the utility's and the Commission's overriding statutory obligation is to protect the public interest of the State of Utah by ensuring the acquisition of resources at the lowest reasonable cost, giving due consideration to other relevant factors. (Utah Code § 54-17-302(3)(c)). The Commission Order properly recognizes and discharges the Commission's obligation in this regard; rehearing is unwarranted.

RMP also purports to rely upon the "policy" of the recently-passed Senate Bill 202. That bill, however, is very clear in its intent and import. It favors renewable resources *only* if they are "cost effective" in comparison to all other "viable resource options." (Utah Code § 54-17-602(1)). Neither RMP nor this Commission could properly discharge its statutory obligations to

Utah ratepayers under SB 202 or the Act to identify and pursue the most cost-effective resources if RMP were permitted to abort solicitation, evaluation or consideration of any major category of resource options up front. All viable resource options must be aggressively and fairly solicited, evaluated and considered by the utility and the Commission through the statutory SB 26 process. The Commission's Order properly recognizes this fact.

VI. The MSP Stipulation and Commission Order Do Not Support RMP's Argument that Other States May Dictate Resource Selection for Utah.

RMP also looks in vain to MSP for support for its contention that Utah should defer to the resource policy decisions of other states. In the first place, it should be pointed out that the two states to which Utah is asked to abandon its resource policy decisions -- California and Washington -- are the only two states served by PacifiCorp that have never approved the MSP Revised Protocol. They are also the two states with the fewest PacifiCorp customers. In any event, neither the MSP Stipulation nor the Commission Order approving that Stipulation offer any support to RMP's position.

The MSP Stipulation, to which UAE is a party, addresses *cost allocation* procedures for existing and future resources. It does not purport in any manner to dictate the types of future resources that will be acquired by PacifiCorp. Nor does it purport to empower any state to dictate the types of future resources that will or will not be considered by PacifiCorp. To the contrary, PacifiCorp committed in the Revised Protocol to "continue to plan and operate its generation and transmission system on a six-State integrated basis *in a manner that achieves a least cost/least risk Resource portfolio for its Customers.*" (Utah MSP Stipulation, Revised Protocol, June 25, 2004). Indeed, the notion that any state could dictate higher system costs for

all states by directing the utility's resource policy decisions is wholly inconsistent with the intent of the MSP Stipulation. To the contrary, the MSP Stipulation set up a framework designed to cause states that impose higher costs on the system to bear those costs.²

In approving the MSP Stipulation, the Commission noted that the problem being addressed by MSP was the “potential impact of divergent states’ policies ... that could result in Company action that is inconsistent with long-run *least cost*, adequate and reliable service to customers.” (Report and Order, December 14, 2004, UPSC Docket No. 02-035-04, at 32) (Emphasis added). Indeed, the Commission emphasized the threat of inconsistent state allocation schemes to “*least-cost* single system planning and operation.” (Id. at 40) (Emphasis added). As in its improper invocation of IRP Orders, RMP ignores the “least cost” goal of single-system planning and operation addressed in the MSP Order.

The Commission also noted that the MSP Stipulation “will not be binding on parties to future rate proceedings and challenges to its terms will have to be dealt with on their merits as they arise,” and that the “parties are not bound to continue to support the Stipulation if circumstances change such that it no longer produces results that are fair, just and reasonable.” (Id. at 36-37). Even if the MSP Stipulation or Commission Order had somehow endorsed single-system planning at the expense of least-cost planning -- which they clearly did not -- the

² RMP references recent MSP proposals allegedly designed to accommodate state-specific policies and suggests, without support, that “Utah parties have not supported consideration” of any such proposals. (Motion for Rehearing at 13). RMP cannot so easily evade its responsibilities. Under no circumstances is it excused from lowest-cost resource procurement. If it believes that it may be at risk of under-recovery of costs in pursuing least-cost procurement because of state policies in California, Washington or elsewhere, it may bring its proposal for addressing its concerns before the MSP Standing Committee and ultimately the Commission. Only the Commission can speak for the State of Utah on interstate allocation or resource selection issues.

Stipulation and Order can and must be abandoned if MSP ceases to lead to lowest-cost electric prices for the State of Utah.

CONCLUSION

UAE recognizes the very real concerns faced by PacifiCorp in light of its multi-state service territory and divergent state policies. UAE also recognizes the multitude of risks associated with coal, gas and other resource options. To the extent compliance with Utah law or the policies of other states creates a risk of under-recovery by PacifiCorp, procedures are available for addressing such issues. In all events, however, the utility must procure the lowest-cost resources for Utah it and must bear the risk of inconsistent state allocation policies.

The concerns and risks faced by RMP do not and cannot justify a wholesale abandonment of an entire category of technically feasible resource options. Moreover, no other state may dictate resource choices for Utah ratepayers. In order for PacifiCorp to discharge its statutory obligation to the ratepayers of Utah, the utility must sincerely and actively solicit, evaluate and consider all available resource options. Only then can the utility or the Commission properly balance cost, risk, reliability and other relevant factors in identifying the optimum set of resources to be procured for the benefit of PacifiCorp's Utah customers. The Commission Order properly recognizes and addresses this obligation. RMP's Motion for Rehearing should be denied.

Respectfully submitted this 27th day of June, 2008.

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/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 27th day of June, 2008, to the following:

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