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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	Response of the Division of Public Utilities to Petition for Clarification or alternatively for Reconsideration Docket No. 08-035-38
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The following is a response by the Division of Public Utilities to the Petition of Rocky Mountain Power for Clarification or alternatively for Rehearing or Reconsideration of the test year order of the Commission.

Rocky Mountain Power (Company) has filed a Petition for Clarification or alternatively for Rehearing or Reconsideration of the test year order issued by the Commission on October 30, 2008. The Company claims that it did not seek clarification or rehearing or reconsideration of the October 30, 2008 test year order at the time it was issued because “the test year order was interim and did not contain provisions regarding reconsideration and review.” Petition for Clarification p. 3. The Company instead uses the revenue requirement order issued by the Commission on April 21, 2009 as its opportunity for it, as a claimed party aggrieved by that order, to seek rehearing and possible judicial review. Petition for Clarification p. 2. The Company goes to some lengths to remind the participants in the docket and the Commission that it was a party to the Stipulation that

served as the basis for the April 21, 2009 Order and continues to support that stipulation and the Commission's order approving the stipulation.

In its Petition the Company objects to portions of the Commission's test year order that states that the Commission will order a procedural process to address what the test year should be prior to the submission of standard revenue requirement material. Petition for Clarification quoting Commission order on test year p. 3. The Company asks for Clarification of the order in three alternative ways. First, the Company asks that the October 30, 2008 order be limited to its 2009 rate case Docket No. 09-035-23. Alternatively, the Company asks that any determination of the appropriate test year prior to filing all of the revenue requirement material be part of the 240 day time period. Finally, the Company asks that the Commission determine that SB 75 and the rulemaking currently going on makes moot the Commission's test year order requiring the determination of test year as a preliminary matter.

If the Commission does not grant clarification, the Company, has alternatively asked the Commission to Reconsider its test year Order and vacate it, raising the possibility of an appeal. The Company has presented its legal argument that the Commission does not have the authority to order the test year to be determined presumably in the way it has now been determined in the Company's 2009 rate case.

For a variety of reasons the Division does not see a need in this docket to clarify the Commission's test year order issued in October. The Division also does not believe that the Company can seek reconsideration of the test year Order and possibly appeal the Commission's April 21, 2009 decision on revenue requirement. The Company was a party to the revenue requirement stipulation and cannot claim harm and obviously is not in any way adversely affected by the April 21, 2009 order. If the Company was intending to object to the test year order it should have filed its objections in October even if the matter could not then be appealed. Parties

then could have then dealt with the possibility of an appeal when they decided to enter into the stipulation. With a potential appeal of the rate case by the Company over the test year decision, parties may have approached the stipulation differently.

NO CLARIFICATION IS NEEDED IN THIS DOCKET

This Docket has been concluded by a stipulation and order where the Company and others have agreed on the revenue requirement. At least two other dockets are open to address test year. Docket No. 09-999-06 is designated “Procedural Process for Identification and Selection of Test Year.” One technical conference has been held to address how test year should be determined in the future. The second docket is Docket No. 09-999-08. This docket will develop rules to comply with the provisions of SB 75. The draft preliminary rules provided to interested parties on June 1, 2009 contain various provisions dealing with test year including the timing of test year filings. Interested parties including the Company will have an opportunity to comment on the draft rules including those addressing test year. If the Company is dissatisfied with those rules it can address its issues through that docket.

The process of deciding test year up-front was used in the Company’s 2009 rate case. It is the Division’s view that the process worked quite well. The Commission has approved a test year prior to the Company filing all of its revenue requirement documents. As in the last two rate cases, no new test year filing will have to occur after the initial Application for rate relief. The Company will not need to go through the effort of re-filing its documents with a new test year. The Company has benefited from the process used in the 2009 rate case. The parties also have benefited. Multiple parties will be able to start their audit and review knowing what the test year is and can make adjustments to the same data set. Again, this order approving a test year was done by stipulation with the Company. Part of the stipulation provides that the Company would file no new general rate case before January 2011. As a result there is no immediate need for

clarification of the October 30 order to occur since the 2009 rate case has addressed test year and no new rate case can be filed until 2011. The rules in Docket No. 09-999-08 can address any clarifications needed and, pursuant to legislative direction, those rules will be in effect this fall.

THE COMPANY SHOULD NOT BE ABLE TO ASK FOR REHEARING AND RECONSIDERATION AND POSSIBLY APPEAL A DECISION THEY AGREED TO

In this case the Company has agreed to what the revenue requirement is and supports the April 21, 2009 order that it now gives notice it may choose to appeal. It does not seem reasonable that a party that has stipulated to the results in a docket can turn around and appeal an earlier Commission decision without, at least, letting all parties that entered into the stipulation with the Company know that it was likely to appeal the decision they are agreeing to. If that had occurred, parties could have chosen how to address that possibility in the stipulation or chosen not to stipulate in light of this possible appeal. Even though the Commission did not include the language about asking for rehearing in its October test year decision, the Company should have at that time asked for clarification or review or rehearing even though the docket had not been concluded and no appeal may have been possible at that time. UCA § 54-7-15 does not seem to distinguish between final orders and non-final orders. It states that any party dissatisfied with any order or decision of the Commission may ask for rehearing. Rule R746-110-11-F states that Petitions for Review or Rehearing must be filed within 30 days of the date of an order with which a party is dissatisfied. UCA 63G-4-301, to which the Commission's rule also refers, does not seem to require an order to be final for a party to request rehearing.

As stated earlier, such a petition for rehearing after the October test year order is particularly relevant in this case since the parties entered into a stipulation ending a portion of the Docket the Company now proposes to challenge.

As a result of the stipulation it is difficult to understand how the Company can claim it has been harmed in a way that it can now seek judicial review. It has stipulated that the ordered rates are just and reasonable. If, in some future rate case or in the rule making, the Company is adversely affected by the Commission's decision or rule, it can ask for rehearing and reconsideration and seek judicial review at that time. For example, if in some future rate case the test year process or decision adversely affects the Company either procedurally or substantially, the Company can address the substantive issues raised in its current petition at that time. The issue would then be ripe for judicial review because the Company could claim it had been adversely affected by the Commission's action, a claim the Company cannot make in this docket.

CONCLUSION

For the reasons stated above, the Division does not see a need for the Commission to clarify its test year decision at this time but, instead, any needed clarifications can occur in the rulemaking (Docket No. 09-999-08) or in an appropriate future rate case of the Company. Also, the Division does not support the Commission granting rehearing and reconsideration of the Test Year Order since a Stipulation has been entered on the revenue requirement that includes the Company and ended the revenue requirement portion of the rate case.

Respectfully submitted this _____ day of June, 2009.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Response of the Division of Public Utilities to Petition for Clarification or alternatively for Reconsideration was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on June _____, 2009:

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