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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for a Certificate of Public Convenience and Necessity Authorizing construction of the Populus-to-Terminal 345 kV Transmission Line	Responsive Comments of the Utah Division of Public Utilities  Docket No. 08-035-42
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In response to the documents filed earlier in this docket, the Division of Public Utilities (Division) files these responsive comments. These comments supplement the responsive testimony filed by Division witness Dr. Joni Zenger.

The Division supports the Committee of Consumer Services' (Committee) call for additional specificity and a rulemaking process addressing certificate issues. The Division notes that the Committee's comments are consistent with Dr. Zenger's earlier filed testimony.

A brief overview of applicable statutes and rules is provided below. Utah Code Ann. § 54-4-25 requires:

Except as provided in Section 11-13-204, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or

system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.<sup>1</sup>

However, a certificate is not required under certain circumstances:

(2) This section may not be construed to require any corporation to secure a certificate for an extension:

- (a) within any city or town within which it has lawfully commenced operations;
- (b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or
- (c) within or to territory already served by it, necessary in the ordinary course of its business.<sup>2</sup>

If a certificate is required, a certificate application shall include the following:

(4)(a)(i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

(ii) If the applicant is in the process of obtaining the required consent, franchise, or permit, a certificate shall be conditioned upon:

(A) receipt of the consent, franchise, or permit within the time period the commission may direct; and

(B) the filing of such evidence of the receipt of the consent, franchise, or permit as the commission may require.

(b) Each applicant, except an interlocal entity defined in [Section 11-13-103](#), shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory

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<sup>1</sup> UCA § 54-4-25(1).

<sup>2</sup> UCA § 54-4-25(2).

certificated to the existing fixed public utility.<sup>3</sup>

In addition, a Commission rule addresses reporting of construction, purchase, acquisition, sale, transfer or disposition of assets.<sup>4</sup>

A certificate application should be complete upon its face with supporting evidence attached thereto in the form of testimony and relevant exhibits. The application itself should meet the requirements set out above; reviewers should not be required to make extensive and wide reaching data requests for additional information or search other dockets for relevant information. More guidance on the proper content of an application would be helpful. A complete and robust application will expedite the review process and focus the data request process. A rulemaking process could address these issues.

Furthermore, in the Scheduling Order, the Commission provided additional guidance and delineation of the appropriate scope of inquiry to frame the issues properly before the Commission. Such guidance was valuable in this case, and perhaps, if the Commission wishes, should be incorporated through a rulemaking procedure for future cases. A rulemaking addressing certification issues will give parties the opportunity to express their opinions and offer suggestions to the Commission.

The Division further requests that the Commission give guidance concerning the distinction between the standard for a prudency review and the standard for granting a certificate application. For example, the August 1, 2008 Direct Testimony of Western Resource Advocates witness Ms. Nancy Kelly

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<sup>3</sup> UCA § 54-4-25(4).

<sup>4</sup> R746-401-3.

seems focused on what may be considered a traditional prudence analysis, rather than a certificate analysis. Although the Utah Supreme Court has given some guidance concerning “public convenience and necessity,”<sup>5</sup> and the Commission has addressed prudence on several occasions, stating, for example, “[t]he Commission’s evaluation of prudence will be based on the reasonableness of the Company’s decision-making process at the time the decision is made,”<sup>6</sup> further delineation and guidance would be helpful. The Public Utility code has codified the standard for prudence in Section 54-4-4(4)(a) with a similar standard to the above quoted Commission decision.

It seems clear to the Division that in the building or acquisition of an asset, a prudence review does not take place in a certificate application, but only takes place in (1) a general rate case where the utility asks that the asset be placed in rate base, or (2) a Section 54-17 proceeding where the utility asks for approval of a significant energy resource or applies for approval of a resource under UCA § 54-17-401. The distinction between a prudence review and a certificate application may be more obvious in cases where a certificate is not required. At a minimum, a prudence review, unlike a certificate application, determines the amount of dollars included in rate base, depreciation rates, and the reasonableness of the utility’s implementation of the certificate. Additional information and clarity concerning the relationship and standard of proof related

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<sup>5</sup> See, e.g., *Mulcahy v. Public Service Commission*, 117 P.2d 298 (Utah 1941).

<sup>6</sup> See *In the Matter of the Filing of Questar Gas Company’s Integrated Resource Plan for Plan Year: May 1, 2007 to April 30, 2008*, Docket No. 07-057-01, Commission Order dated December 14, 2007, p. 41.

to a certificate application and a prudence review could be provided through the rulemaking process.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of August 2008.

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