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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of Rocky Mountain Power for Approval of Significant Energy Resource Decision Resulting from 2012 Request for Proposals

Docket No. 08-035-95

In the Matter of the Application of PacifiCorp for Approval of a 2009 Request for Proposals for Flexible Resource

Docket No. 05-035-47

**ROCKY MOUNTAIN POWER REPLY  
TO COMMITTEE OF CONSUMER  
SERVICES RESPONSE**

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), hereby replies to the “Utah Committee of Consumer Services’ Response to Rocky Mountain Power’s Rebuttal Comments and Notice of Termination of Agreement (February 12, 2009) and Notice of Withdrawal of Application (February 19, 2009),

Docket No. 08-035-95; Request to Close Docket and Terminate 2012 RFP, Docket No. 05-035-47 (February 25, 2009) . . . (“Response”) filed March 9, 2009.<sup>1</sup>

**A. Rocky Mountain Power’s Rebuttal Comments and Notice of Termination of Agreement, Notice of Withdrawal and Request to Close Docket and Terminate 2012 RFP Are Not Requests for Agency Action.**

In its Response, the Committee erroneously characterizes Rocky Mountain Power’s Rebuttal Comments and Notice of Termination of Agreement, filed February 12, 2009 (“Notice of Termination”), its Notice of Withdrawal, filed February 19, 2009 (“Notice of Withdrawal”), and its Request to Close Docket and Terminate 2012 RFP (“Request to Close Docket”) as requests for agency action. In fact, these filings are simply informational filings that the Company filed in order to notify parties that (1) the Company had terminated the Master Development, Engineering, Procurement and Construction Agreement (“Agreement”) for Lake Side 2, (2) as a result of such termination, the Company was withdrawing its application for approval of Lake Side 2 in Docket 08-035-95, and (3) since no energy resource decision had resulted from the 2012 RFP, the 2012 RFP was concluded. That said, as part of the Notice of Withdrawal and the Request to Close Docket, Rocky Mountain Power requested that the Commission close the dockets as it would, henceforth, be unnecessary to keep them open because nothing was pending in either docket. Notably, the Company did not request Commission approval of either the Notice of Termination or the Notice of Withdrawal.

The Commission’s rules expressly exclude informational filings from requests for agency actions, as follows:

The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204: a.

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<sup>1</sup> Rocky Mountain Power has replied to the portion of the Response addressing the Company’s Motion to Suspend 2008 RFP in Docket No. 07-035-94 in a separate reply.

motions, oppositions, and similar filings in existing Commission proceedings; b. *informational filings which do not request or require affirmative action, such as Commission approval.*

Utah Admin. Code R746-100-3.A.1 (emphasis added).

Given that the Notice of Termination, the Notice of Withdrawal and the Request to Close Docket are not requests for agency action, the Committee's "response" is procedurally improper. Because the Company filed its Notice of Termination and its Notice of Withdrawal in Docket 08-035-95 and because no energy resource decision resulted from the 2012 RFP, there is nothing pending in either docket to adjudicate.

**B. It Is Not Necessary to Keep Dockets 08-035-95 and 05-035-47 Open for Longer than 30 Days Because Rocky Mountain Power Has Agreed to Provide Information Pertaining to Its Decision to Cancel Lake Side 2 Through Responses to Data Requests and the IE Can Provide Any Additions to Its Final Report within that Time Frame.**

The Committee argues that the Commission must keep Dockets 08-035-95 and 05-035-47 open for longer than 30 days because closing them would impede the objective of correcting deficiencies in the solicitation process and because the parties have a right to know why the Company decided to cancel Lake Side 2. The Committee alleges that the Company has offered no "probative, meaningful explanation for either its decisions or alternate plans." Further, the Committee alleges that at the February 19, 2009 hearing in Docket 08-035-95 ("Hearing"), the Company's presentation lacked helpful information. The Committee's position is disingenuous.

Regarding the Committee's allegations that the Company has offered no meaningful explanation of its decision to cancel Lake Side 2, a Company representative was questioned at the Hearing for over one hour, and answered most of the questions posed by the Commission and the parties in attendance. Further, it is also false to claim

that the Company refused to answer questions at the Hearing.<sup>2</sup> The fact is that the Company *could not* answer some of the questions posed because it did not, at the time, have the information requested. However, the Company indicated a willingness to provide information that was not then available. Ultimately, the Company agreed that it would respond to formal data requests. And in fact, on the same day as the Hearing, the Division of Public Utilities and the Committee served sixteen data requests to the Company, which the Company agreed, during subsequent discussions with the Committee and the Division held prior to the date the Committee filed its Response, to answer by March 10, 2009 and March 18, 2009, regardless of whether the dockets were closed. The Company has now answered those questions.

In addition, in the Request to Close Docket, the Company acknowledged that its request was not intended to foreclose the provision by the IE of any report deemed necessary by the Commission. The Company suggested that such a report could reasonably be provided within 30 days. Once any report requested by the Commission is provided, there is nothing further to be done in Docket 05-035-47. If the Committee believes a proceeding should be initiated to address issues related to future RFPs, it may propose such a proceeding.

**C. The Recommendations in the Committee's Response Are Improper and Unnecessary under the Energy Resource Procurement Act.**

The Committee's recommendations to investigate (1) the IE's role in the 2012 RFP and Lake Side 2 approval process; (2) the sufficiency of the notice and progress reports provided to the Commission; (3) the structure and timing of the Agreement; and

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<sup>2</sup> The Committee's mischaracterization of the facts is simply a smear campaign against the Company and a complete waste of the Commission's time.

(4) cost recovery issues, with respect to Dockets 05-35-47 and 08-035-95 are improper and unnecessary under the Energy Resource Procurement Act.

The Committee's recommendations casts doubt on the propriety of the IE's role in the 2012 RFP process and in the Lake Side 2 approval process. There is no basis for such doubt for at least three reasons. First, as indicated in the IE's Reports, the Company kept the Commission, through the IE, informed of its progress and of issues and disputes that came up throughout the RFP process. Second, the IE's Reports include a lengthy discussion regarding the IE's view of the way the Company structured and negotiated the Agreement. Third, the IE has done nothing that is inconsistent with its job as specified in the Act and Commission rules, which is to oversee the entire solicitation process in behalf of the Commission, to provide feedback to the Company and the Commission on all aspects of the solicitation process and to provide reports to the Commission and the Division of any issues that arise during the solicitation process. *See, e.g.* Utah Code Ann. § 54-17-203(3)(b); Utah Admin. Code R746-420-6. Given these broad duties, it is entirely proper for the Company to keep the IE informed of its decisions and to solicit its input, if any, into those decisions. Had the Company not done so, the Committee would undoubtedly claim that its failure to keep the IE informed and involved would have been improper.

With regard to the Committee's request for an investigation of cost recovery, the Company deems it unnecessary and improper for the Commission to consider cost recovery issues related to Lake Side 2 at this time because the Company is not seeking recovery of such costs at this time. As previously noted, the Company has no objection to providing responses to the data requests of the Division and Committee, but there is no

reason for the Commission to embark on an investigation and hearings on issues that have not yet been raised. Doing so would be a complete waste of resources.

In conclusion, the Committee's recommendations are not only unnecessary for the foregoing reasons but they are also unnecessary because the Commission is not required to undertake them under the Energy Resource Procurement Act.

Respectfully submitted this 19th day of March, 2009.

ROCKY MOUNTAIN POWER

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served upon the following by electronic mail sent March 19, 2009:

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