

PATRICIA E. SCHMID (#4908)  
Assistant Attorney General  
Counsel for the DIVISION OF PUBLIC UTILITIES  
MARK L. SHURTLEFF (#4666)  
Attorney General of Utah  
160 E 300 S, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
Telephone (801) 366-0380

**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.	Docket No. 10-035-124
In the Matter of the Application of the Utah Association of Energy Users for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment.	Docket No. 10-035-14
In the Matter of the Application of Rocky Mountain Power for Approval of Its Proposed Energy Cost Adjustment Mechanism.	Docket No. 09-035-15

**REPLY OF THE DIVISION OF PUBLIC UTILITIES  
TO ROCKY MOUNTAIN POWER'S MOTION FOR DETERMINATION OF  
RATEMAKING TREATMENT OF DEFERRED ACCOUNTS**

Pursuant to R746-100-4, the Utah Division of Public Utilities (Division) responds to Rocky Mountain Power's (Company) Motion for Determination of Ratemaking Treatment of Deferred Accounts filed on June 2, 2011 in the above referenced dockets

(Motion).<sup>1</sup> The Company seeks an order amortizing the balance in the deferred account containing the difference between actual and forecast net power costs (NPC) between the NPC ordered in its 2009 rate case and the date upon which the Commission issued an order approving an energy balancing account (EBA) (Deferred NPC Account). The Company also seeks amortization of the amounts in the deferred REC account (Deferred REC Account). The Division requests that the Commission (1) deny the Company's request to amortize and recover the balance in the Deferred NPC Account and (2) decide issues regarding the balance in the Deferred REC account in the Company's current general rate case, Docket No. 10-035-124.

#### Abbreviated Background

An abbreviated history highlighting certain events will help place the issues in context. The Company filed its application for an Energy Cost Adjustment Mechanism (ECAM) on March 19, 2009, requesting that the ECAM go into effect at the conclusion of the next general rate case. In June, 2009, the Company filed a rate case application (2009 rate case), and later the Company requested deferred accounting treatment of the difference between the NPC filed in the 2009 case and the NPC actually in rates starting with the effective date of the 2009 rate case. On February 18, 2010 the Commission issued its order in the 2009 rate case.

Subsequently, the Utah Association of Energy Users (UAE) filed a motion requesting deferred accounting treatment of Renewable Energy Credits (RECs). In July 2010, the Commission approved a stipulation granting both motions for deferred accounting treatment. In December 2010, the Commission approved a stipulation

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<sup>1</sup> Pursuant to R746-100-4, the electronic copy of this pleading should have been filed on Friday and the paper copies filed today. However, the Division requests leave to file both the electronic copy and the paper copies and to make service today.

addressing rate increases associated with two major plant addition cases; the stipulation provided for specific treatment of REC revenue, namely, a \$3 million sur-credit for REC revenues not then currently in rates.

On January 24, 2011, the Company filed for a rate increase (2010 rate case). On March 3, 2011, the Commission issued its order in the ECAM docket, Docket No. 09-035-15, and this order became known as the EBA Order. The EBA Order ordered that the Company's EBA begin the first day of the month following the effective date of its 2011 rate case. Neither the amount in the NPC Deferred Account nor the deferred RECs were included in the EBA. Certain testimony in the 2010 rate case, Docket No. 10-035-124, addressed issues related to the deferred REC revenues. On June 2, 2011, the Company filed this Motion in the three dockets referenced above.

#### Argument Concerning NPC

The Commission should deny the Company's request to amortize the amount in the NPC Deferral Account. The Company's request is tantamount to requesting that the Commission implement the EBA before the EBA Order was issued. The Company's request here is strikingly similar to its request in the EBA docket prior to issuance of the EBA Order, to which the Division filed a response.<sup>2</sup> The Company's requested relief concerning the NPC Deferral Account is contrary to statute and case law, and the Commission should deny the Company's Motion regarding this account.

The deficiencies in the Company's argument are easily seen after an analysis of Utah Code Ann. § 54-7-13.5 which permits and circumscribes EBAs, including the implementation and recovery thereof. Importantly, the statute clearly states that "An

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<sup>2</sup> See Docket No. 09-035-15, particularly the Company's February 9, 2010 request for deferred accounting treatment of NPC and the Division's response dated February 24, 2010. Ultimately the Company's motion was resolved by Commission approval of a stipulation.

energy balancing account shall become effective upon a commission finding that the energy balancing account is:

- (i) in the public interest;
- (ii) for prudently-incurred costs; and
- (iii) implemented at the conclusion of a general rate case.”

Thus, in order to comply with the statute, a Commission order must include a finding that the proposal is in the public interest and will recover only prudently incurred costs, and also must be issued prior to the implementation of the EBA.

The EBA Order found that the EBA proposed by the Company was not in the public interest, and thus, “without modification, it does not meet the statutory requirements for our approval of an energy balancing account.”<sup>3</sup> However, the Commission did determine that an EBA could be designed that would be in the public interest and comply with statutory requirements, stating:

We conclude with certain modifications, an energy balancing account for the Company can be designed to mitigate the concerns raised by the parties, to service the public interest, and to satisfy the Energy Balancing Account statute requirements. These modifications are based on the evidence in this case. Accordingly, this order defines and approves this energy balancing account to be implemented at the conclusion of the Company’s pending general rate case.<sup>4</sup>

The Commission further explicitly addressed implementation of the Company’s just approved EBA, stating:

We approve implementation of this approved EBA on the first day of the month following our decision in the Company’s pending general rate case, filed January 24, 2011, in Docket No. 10-035-124. The base net power cost used to determine the ‘revenues collected’ for calculating the monthly deferred amounts will be determined based on the

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<sup>3</sup> EBA Order at p. 63.

<sup>4</sup> Id.at p. 64.

outcome of that case. We accept the Company's proposal for annual reconciliation of the deferred account balance. Annual reconciliation will allow for rate stability and simplicity. This 12-month period shall be a calendar year. However, the starting date for EBA accruals will coincide with the date rates are made effective in the pending rate case. Therefore the first reconciliation will be for a partial year. Base net power cost will be reset in appropriate rate change proceedings or as needed.<sup>5</sup>

Additionally, the Commission stated, "Finally, we conclude the EBA adopted herein will function in conformance with the structural requirements of the Energy Balancing Account statute."<sup>6</sup> Thus clearly the Commission's July 14 2010 order permitting the establishment of deferred accounts for NPC and REC revenues is not the equivalent of the Commission's March 3, 2011 EBA Order finding that that the EBA, as established by the order, is in the public interest and is for prudently incurred costs.

Moreover, recovery of the balance in the NPC Deferred Account is prohibited by the rule against retroactive ratemaking. Utah case law has addressed the issue of retroactive ratemaking, and has emphasized that an exception to the rule against retroactive ratemaking requires both unforeseen and extraordinary events.<sup>7</sup> The fact that, contrary to the Company's expectations, the EBA Order was not issued prior to the order for the 2009 rate case does not provide a basis for an exception to the rule against retroactive ratemaking.

Therefore, the Company's request concerning the NPC Deferred Account should be denied because it is contrary to both the applicable statute and case law.

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<sup>5</sup> Id. at p. 77 (emphasis added).

<sup>6</sup> Id. at p. 80.

<sup>7</sup> See, e.g., MCI Telecommunications Corp. v. Public Service Commission, 840 P.2d 765 (Utah 1992).

### Argument Concerning REC Revenues

The treatment of the Deferred REC Accounts properly at issue in Docket No. 10-035-124 and should be decided in that docket. Numerous parties have filed testimony in Docket No. 10-035-124 and the issue is properly before the Commission for resolution now in that docket.

### Conclusion

The Division urges the Commission to deny the Company's request regarding the NPC Deferred Account. The Division also urges the Commission to decide issues involving the Deferred REC Account in Docket No. 10-035-124.

Respectfully submitted this 20th day of June 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Patricia E. Schmid  
Assistant Attorney General  
*Attorney for Utah Division of Public Utilities*

## CERTIFICATE OF SERVICE

(Docket Nos. 09-035-15, 10-035-14, 10-035-124)

I hereby certify that on this 20th day of June 2011, I caused to be emailed, a true and correct copy of the foregoing to:

Michele Beck  
Executive Director  
COMMITTEE OF CONSUMER SERVICES  
Heber Wells Building  
160 East 300 South, 2<sup>nd</sup> Floor  
SLC, UT 84111  
mbeck@utah.gov

David L. Taylor  
Yvonne R. Hogle  
Mark C. Moench  
ROCKY MOUNTAIN POWER  
201 South Main Street, Suite  
2300  
SLC, UT 84111  
Dave.Taylor@pacificorp.com  
yvonne.hogle@pacificorp.com  
mark.moench@pacificorp.com  
datarequest@pacificorp.com

Chris Parker  
William Powell  
Dennis Miller  
DIVISION OF PUBLIC UTILITIES  
500 Heber Wells Building  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, UT 84111  
chrisparker@utah.gov  
wpowell@utah.gov  
dennismiller@utah.gov

Paul Proctor  
ASSISTANT ATTORNEYS GENERAL  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
pproctor@utah.gov

Cheryl Murray  
Dan Gimble  
Danny Martinez  
UTAH COMMITTEE OF CONSUMER  
SERVICES  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111  
cmurray@utah.gov  
dgimble@utah.gov  
dannymartinez@utah.gov

Gary Dodge  
Hatch James & Dodge  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
gdodge@hjdllaw.com

Kevin Higgins  
Neal Townsend  
ENERGY STRATEGIES  
39 Market Street, Suite 200  
Salt Lake City, UT 84101  
khiggins@energystrat.com  
ntownsend@energystrat.com

Peter J. Mattheis  
Eric J. Lacey  
Brickfield, Burchette, Ritts &  
Stone,  
P.C.  
1025 Thomas Jefferson St.,  
N.W.  
800 West Tower  
Washington, D.C. 20007  
pjm@bbrslaw.com  
elacey@bbrslaw.com

Holly Rachel Smith, Esq.  
Holly Rachel Smith, PLLC  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115  
holly@raysmithlaw.com

Sophie Hayes  
Sarah Wright  
Utah Clean Energy  
1014 2<sup>nd</sup> Avenue  
Salt Lake City, UT 84111  
sophie@utahcleanenergy.org  
sarah@utahcleanenergy.org

Stephen F. Mecham  
Callister Nebeker &  
McCullough  
10 East South Temple Suite  
900  
Salt Lake City, Utah 84133  
sfmecham@cnmlaw.com

Kurt J. Boehm, Esq.  
BOEHM, KURTZ & LOWRY  
36 E. Seventh St., Ste1510  
Cincinnati, Ohio 45202  
Kboehme@BKLLawfirm.com  
Sharon M. Bertelsen  
Ballard Spahr LLP  
201 So. Main Street, Ste 800  
Salt Lake City, Utah 84111  
bertelsens@ballardspahr.com

Charles (Rob) Dubuc  
Western Resource Advocates  
& Local Counsel for Sierra Club  
150 South 600 East, Suite 2A  
Salt Lake City, UT 84102  
rdubuc@westernresources.org

Randy N. Parker, CEO  
Utah Farm Bureau Federation  
9865 South State Street  
Sandy, Utah 84070  
rparker@fbfs.com

Captain Shayla L. McNeill  
Ms. Karen S. White  
Staff Attorneys  
AFLOA/JACL-ULFSC  
139 Barnes Ave, Suite 1  
Tyndall AFB, FL 32403  
Shayla.mcneill@tyndall.af.mil  
Karen.white@tyndall.af.mil

Bruce Plenk  
Law Office of Bruce Plenk  
2958 N St Augustine Pl  
Tucson, AZ 85712  
bplenk@igc.org  
Stephen J. Baron  
J. Kennedy & Associates  
570 Colonial Park Drive, Ste 305  
Roswell, GA 30075  
sbaron@jkenn.com

Janee Briesemeister  
AARP  
98 San Jacinto Blvd. Ste. 750  
Austin, TX 78701  
jbriesemeister@aarp.org

Steven S. Michel  
Western Resource Advocate  
409 E. Palace Ave. Unit 2  
Santa Fe, NM 87501  
smichel@westernresources.org

Leland Hogan, President  
Utah Farm Bureau Federation  
9865 South State Street  
Sandy, Utah 84070  
leland.hogan@fbfs.com

Mike Legge  
US Magnesium LLC  
238 North 2200 West  
Salt Lake City, Utah 84106  
mlegge@usmagnesium.com

ARTHUR F. SANDACK, Esq  
8 East Broadway, Ste 411  
Salt Lake City, Utah 84111  
[asandack@msn.com](mailto:asandack@msn.com)

Gerald H. Kinghorn  
Jeremy R. Cook  
Parsons Kinghorn Harris, P.C.  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
ghk@pkhlawyers.com  
jrc@pkhlawyers.com  
Sonya L. Martinez, CSW  
Policy Advocate  
Betsy Wolf  
Salt Lake Community Action  
Program  
764 South 200 West  
Salt Lake City, UT 84101  
Smartinez@slcap.org  
[bwolf@slcap.org](mailto:bwolf@slcap.org)

Nancy Kelly  
Western Resource Advocates  
9463 N. Swallow Rd.  
Pocatello, ID 83201  
nkelly@westernresources.org

Ryan L. Kelly, #9455  
Kelly & Bramwell, P.C.  
11576 South State St. Bldg.  
1002  
Draper, UT 84020  
ryan@kellybramwell.com

Roger Swenson  
US Magnesium LLC  
238 North 2200 West  
Salt Lake City, UT 84114  
roger.swenson@prodigy.net

Steve W. Chriss  
Wal-Mart Stores, Inc.  
2001 SE 10<sup>th</sup> Street  
Bentonville, AR 72716-0550  
stephen.chriss@wal-mart.com  
Gloria D. Smith  
Senior Attorney  
Sierra Club  
85 Second Street, 2<sup>nd</sup> Fl.  
San Francisco, CA  
[gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org)

F. ROBERT REEDER (2710)  
WILLIAM J. EVANS (5276)  
VICKI M. BALDWIN (8532)  
CORY D. SINCLAIR (11158)  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite  
1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898

\_\_\_\_\_/s/\_\_\_\_\_  
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