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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism

Response of the Division of Public Utilities to Motion of Rocky Mountain Power to Implementation of ECAM

**Docket No. 09-035-15**

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The following is a response of the Division of Public Utilities (Division or DPU) to the Motion of Rocky Mountain Power (RMP or Company) for a ruling on implementation of an ECAM.

1. On July 30, 2009 the Company filed a Motion with the Commission asking it to opine on the meaning of Utah Code Ann. § 54-7-13.5(2)(b)(iii) which states that an ECAM type of mechanism must be implemented “at the conclusion of a general rate case.” The Company argues that under this statute the Commission can implement an ECAM type mechanism “following but in reasonably close proximity to the final order in the currently pending general rate case.” (Motion P. 14) Alternatively, if the Commission determines that implementation must occur by February 18, 2009, the end of the 240-day time period, then the Company wants to expedite the schedule so that this docket can be concluded by that date. (Motion P. 14) Since

the filing of the Company's Motion the Commission has made a number of decisions that may make the Company's Motion moot and also may make it impossible to conclude Phase 2 of this docket by February 18, 2009 if that be required. On August 4, 2009 the Commission issued its Order granting in part the Motion to bifurcate the rate case (Docket No. 09-035-23). The Commission determined it would issue an Order on revenue requirement and cost of service by February 18, 2009, but would decide rate design after February 18, 2009 but before the summer of 2010. Obtaining an ECAM Phase 2 Order before May 2010 would largely moot the Company's need to have the Commission interpret the statute as allowing implementation of an ECAM close to the conclusion of a general rate case. Also, on August 4, 2009 the Commission revised the schedule for Phase 1 of this Docket. It moved the hearing dates from December 2009 to January 11-14, 2010. The DPU believed it would have been impossible to conclude Phase 2 by February 18, 2010 when the hearings were in December. Moving the Phase 1 hearings to January effectively makes conclusion of this docket prior to February 18 wholly infeasible (unless the Commission were to find that no form of ECAM is warranted).

2. Certain other facts should be kept in mind when evaluating the Company's Motion. First, the Commission should keep in mind that the ECAM proceedings now have a tight time schedule because the Company failed to file the information needed by the Commission when the Company started this docket last March. The Company's revised filing to support its ECAM has just now come in mid-August. Many parties requested that the Commission dismiss the Company's Application for failure to file sufficient information. Instead, the Commission has given the Company the opportunity to supplement its original filing. Second, it is impossible to gauge at this point how much time will be needed to hold

Phase 2 hearings. It is impossible to gauge how long the Commission will need to decide Phase 1 after the January hearing. Not until that decision is made can parties and the Commission truly gauge how long it will take to address issues in Phase 2. Third, although the Company has proposed an ECAM mechanism there is no assurance that what may get adopted, if anything will look in any way like what the Company has proposed. These facts lead to some conclusions.

3. Under no circumstances should the Commission try to squeeze Phase 2 hearings in order to reach a conclusion before February 18, 2010. Hearings on Phase 1 will not be held until January 2010. Trying to reach a decision on Phase 1 and then to develop a process for and to make a decision upon Phase 2 prior to the end of the 240-day time period in the Docket No. 09-035-23 rate case would be unreasonable - the issues surrounding the ECAM are too important.

Even though the bifurcation of the general rate case between revenue requirement and cost of service and rate design may make moot the issue what the “at” means in the new statute at Utah Code Ann. § 54-7-13.5 (2)(a)(iii), the Division does not believe the Commission needs to decide what the implications are if Phase 2 cannot be decided prior to the end of rate design phase of the general rate case. Although the Division anticipates that Phase 2 can be completed by the end of the rate design portion of the case, it is not necessary to answer that question today or to determine what the implications might be if that does not occur. The ECAM type of mechanism that could come out of Phase 2 of this proceeding may be significantly different than what the Company has proposed. It might be so significantly different that implementing it after the end of the general rate case may cause such significant problems that the Commission cannot find that it is in the public interest and will result in just and reasonable rates. In other words

even if one were to accept the Company's interpretation that "at" means within a reasonable time after the conclusion of a general rate case, that interpretation should not be able to exist independent of the Commission being able to make a finding that the delay in implementation is in the public interest and will produce just and reasonable rates. It seems that those findings can only be made at the time a decision is made in Phase 2 and the implementation of the mechanism.

4. The Division has no real problem that an ECAM type mechanism can be implemented within a reasonable proximate time from the conclusion of a general rate case so long as the Commission can make a finding that the mechanism is in the public interest and will result in prudently incurred costs and just and reasonable rates exists when the ECAM is implemented. However, as stated previously, the Commission should not give a carte blanc endorsement to this concept until it has all the facts before it including what the ECAM will look like, how costs will be accounted for and all other aspects of the mechanism that have an effect on its implementation.

Conclusion - The Division urges:

1. Under no circumstances should the Commission try to finish Phase 2 of this proceedings before February 18, 2010;
2. Because of the bifurcation, the issue of deciding the ECAM at the conclusion of a general rate case is probably moot;

3. The Commission need not, and therefore should not, at this time, determine whether the new statutory language of Utah Code Ann. § 54-7-13.5 (2)(a)(iii) allows for the implementation of an ECAM “reasonably near” the end of a general rate case.

Respectfully submitted this \_\_\_\_\_ day of August, 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 Motion of Rocky Mountain Power to Implementation of ECAM was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on August \_\_\_\_\_, 2009:

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