

MICHAEL L. GINSBERG (#4516)  
PATRICIA E. SCHMID (#4908)  
Assistant Attorneys 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

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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 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. 09-035-23  RESPONSE OF THE UTAH DIVISION OF PUBLIC UTILITIES TO ROCKY MOUNTAIN POWER'S PETITION FOR IMMEDIATE STAY AND FOR RECONSIDERATION OF MSP ORDER
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The following is a Response by the Division of Public Utilities (Division or DPU) to the Petition for an Immediate Stay and Motion to Reconsider the MSP Order filed October 22, 2009 by Rocky Mountain Power (RMP or Company) in this docket.

1. On October 19, 2009 the Commission issued an Order requiring the Company to file with the Commission and all parties the 2009 Preliminary Forecast and all applicable work papers that became available to the participants in the Multi State Process (MSP) on August 17, 2009. This information was to be filed with the Commission by October 26, 2009. The Commission did not require any other filing from the Company by that date other than the study and work

papers, but, instead, ordered that the Division and invited other parties, by November 12, 2009, to answer two questions. These two questions were: (1) Are the continued use of the 2004 Stipulation terms for the development of the Utah revenue requirement in this case in the public interest? (2) Whether there are alternatives, such as the use of the Rolled-In method without the revenue requirement adjustments contained in the 2004 Stipulation terms, which would be just and reasonable in this case? The November 12, 2009 date is the rebuttal date for testimony in the general rate case. Responses to that testimony presumably would be due on the date final surrebuttal is due on November 30, 2009.

2. The Company's filing on October 22, 2009 asks the Commission immediately to stay the requirement to file the Preliminary 2009 study by October 26, 2009 in this rate case and also asks the Commission to reconsider the Commission's October 19, 2009 Order. The Company asks the Commission to allow the MSP process to address the issues set forth in the Commission's Order and, if necessary, address the Commission's questions in the Company's next general rate case. The Company points out that it is to circulate a concept paper by October 26, 2009 within the MSP process. Also, Oregon has agreed to circulate its proposal amongst the MSP participants to address inter-jurisdictional allocations by October 26, 2009. A conference call within the MSP process is scheduled for October 29, 2009 with additional conference calls scheduled for November 19 and December 9, 2009. The next Commissioner's Forum in the MSP process is scheduled for March 9, 2010. (Company's Petition p. 6).

3. The Company has raised concerns that by proceeding with its order, the Commission will create questions about ex parte communications if the Commission participates in the MSP proceedings while the rate case is pendent. The Division believes that it is critical for the Commission to participate in the MSP discussions and, if the Commission either chooses not to participate or is precluded from participating, a meaningful discussion and analytical process will be significantly affected.

4. The Division believes that the August 2009 report raises serious questions that should be addressed in a timely manner, but is concerned that addressing those issues within the context of this rate case may actually delay timely and equitable resolution of those issues.

5. The Division believes the questions raised by the Company's Preliminary 2009 study raise significant issues as to the continued reasonableness of the Revised Protocol. The Division, within the MSP process, is addressing these issues. Among other things, the Division intends to analyze the Preliminary 2009 study and alternatives to Revised Protocol that may be proposed by other states. These issues are very complex and warrant a detailed analysis by the Division and other Utah parties before making recommendations to the Commission on the questions raised in its October 19, 2009 Order. The Division has concluded that even if the Company had not filed its Motion, the Division would not be in a position to be able to adequately address the Commission's questions by November 12, 2009. Although the Division has had the Preliminary study for some time, it has only today received the work papers

associated with that study. These work papers are numerous and require careful study and analysis. The Division also has not had the opportunity to ask data requests or otherwise determine the credibility and validity of the study and work papers. This analysis seems even more critical when the Company has indicated that the study is only a preliminary estimate of the future.

6. The 2004 Stipulation on the MSP's revised protocol, while providing for the withdrawal of parties, also commits the signatory parties and agencies (of which the Division is one) to make good faith efforts to reach consensus on future revisions to the revised protocol. While the Division takes seriously its legal obligation to pursue just and reasonable rates in Utah, it is also bound to weigh the interests of all parties in this case (including Pacificorp's) and has committed to use the MSP process to seek equitable resolution to inter-jurisdictional allocation issues that may arise. The Division's patience with this process will not be unlimited. We would expect to be able to apply any new allocation methodology – or perhaps the “rolled-in” method if it is found to be more appropriate than the revised protocol and if no resolution is agreed upon – in the next rate case expected to be filed in 14 months (January, 2011). The Division therefore believes that this rate case is not the best venue for addressing MSP issues at this time.

7. The Company argues in its Motion that the Preliminary 2009 study is so preliminary that it cannot be relied on as credible evidence for the Commission to make a decision. It is unclear to the Division what remains to be done so that the Company could represent to the Commission that it believes the

results of the Preliminary 2009 study are credible and can be relied on by the Commission as the Company's best estimate of the future. The Company's indication that the study is so preliminary to raise issues of credibility raise additional concerns for the Division as to its ability to meet the Commission's directive in its October 19, 2009 Order for the Division to answers the two questions by November 12, 2009.

8. Since the Company has indicated that this study is preliminary, but, has not provided the Commission a date it will file a final study that it believes represents the future the Commission could require the Company to present a final 2009 study within a reasonable time. In addition, the Commission could at this time make it clear that if the MSP process does not adequately and timely address the Commission's questions, the Commission could institute a docket on its own Motion to address its questions raised its October 19, 2009 Order in a more complete manner then could be done within the context of this rate case, given the present time constraints.

9. In conclusion, independent of the Company's Motion, the Division does not believe it can adequately address the issues raised by the Preliminary Study within the context of this rate case. Moreover, the Division believes that addressing the issues raised by the Study can best and most-timely be done initially outside of a litigated rate case. Finally, the Division agreed to participate in the MSP process to resolve such issues. For those reasons the Division supports addressing the Commission questions through the MSP process in a timely manner and, if needed, open a separate docket to consider those issues.

In addition the Division would recommend that the Company file in timely manner the 2009 study that it believes best represent the future.

RESPECTFULLY SUBMITTED, this \_\_\_\_\_ day of October, 2009.

UTAH DIVISION OF PUBLIC UTILITIES

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Michael L. Ginsberg  
Patricia E. Schmid  
Assistant Attorneys General  
Attorneys for the Division  
of Public Utilities  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing RESPONSE OF THE UTAH DIVISION OF PUBLIC UTILITIES TO ROCKY MOUNTAIN POWER'S PETITION FOR IMMEDIATE STAY AND FOR RECONSIDERATION OF MSP ORDER to be served upon the following by electronic mail to the addresses shown below on October 27, 2009:

Mark C. Moench  
Yvonne R. Hogle  
Daniel Solander  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, Utah 84111  
[mark.moench@pacificorp.com](mailto:mark.moench@pacificorp.com)  
[yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com)  
[daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com)

Paul Proctor  
Assistant Attorney General  
Utah Committee of Consumer  
Services  
Heber M. Wells Bldg., Fifth Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Dennis Miller  
William Powell  
Philip Powlick  
Division of Public Utilities  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[dennismiller@utah.gov](mailto:dennismiller@utah.gov)  
[wpowell@utah.gov](mailto:wpowell@utah.gov)  
[philippowlick@utah.gov](mailto:philippowlick@utah.gov)

Cheryl Murray  
Dan Gimble  
Michele Beck  
Committee of Consumer Services  
Heber M. Wells Building, 2nd Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[cmurray@utah.gov](mailto:cmurray@utah.gov)  
[dgimble@utah.gov](mailto:dgimble@utah.gov)  
[mbeck@utah.gov](mailto:mbeck@utah.gov)

F. Robert Reeder  
William J. Evans  
Vicki M. Baldwin  
Parsons Behle &, Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
[bobreeder@parsonsbehle.com](mailto:bobreeder@parsonsbehle.com)  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)  
[vbaldwin@parsonsbehle.com](mailto:vbaldwin@parsonsbehle.com)

Rick Anderson  
Kevin Higgins  
Neal Townsend  
Energy Strategies, Inc.  
215 South State Street, Suite 200  
Salt Lake City, UT 84111  
[randerson@energystrat.com](mailto:randerson@energystrat.com)  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)  
[ntownsend@energystrat.com](mailto:ntownsend@energystrat.com)

Gary A. Dodge  
Hatch James & Dodge  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

Michael L. Kurtz  
Kurt J. Boehm  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[mkurtz@bklawfirm.com](mailto:mkurtz@bklawfirm.com)  
[kboehm@bklawfirm.com](mailto:kboehm@bklawfirm.com)

Peter J. Mattheis  
Eric J. Lacey  
Brickfield, Burchette, Ritts & Stone,  
P.C.  
1025 Thomas Jefferson Street, N.W.  
800 West Tower  
Washington, D.C. 20007  
[pjm@bbrslaw.com](mailto:pjm@bbrslaw.com)  
[elacey@bbrslaw.com](mailto:elacey@bbrslaw.com)

Gerald H. Kinghorn  
Jeremy R. Cook  
Parsons Kinghorn Harris, P.C.  
111 East Broadway, 11th Floor  
Salt Lake City, UT 84111  
[ghk@pkhlawyers.com](mailto:ghk@pkhlawyers.com)  
[irc@pkhlawyers.com](mailto:irc@pkhlawyers.com)

Holly Rachel Smith  
Russell W. Ray, PLLC  
6212-A Old Franconia Road  
Alexandria, VA 22310  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

Mr. Ryan L. Kelly  
Kelly & Bramwell, PC  
Attorneys at Law  
11576 South State Street Bldg. 203  
Draper, UT 84020  
[ryan@kellybramwell.com](mailto:ryan@kellybramwell.com)

Steve W. Chriss  
Wal-Mart Stores, Inc.  
2001 SE 10th Street  
Bentonville, AR 72716-0550  
[stephen.chriss@wal-mart.com](mailto:stephen.chriss@wal-mart.com)

Arthur F. Sandack  
Attorney for Petitioner IBEW Local 57  
8 East Broadway, Ste 510  
Salt Lake City, UT 84111  
[asandack@msn.com](mailto:asandack@msn.com)

Steven S. Michel  
Western Resource Advocates  
2025 Senda de Andres  
Santa Fe, NM 87501  
[smichel@westernresources.org](mailto:smichel@westernresources.org)  
[penny@westernresources.org](mailto:penny@westernresources.org)

Nancy Kelly  
Western Resource Advocates  
9463 N. Swallow Rd.  
Pocatello, ID 83201  
[nkelly@westernresources.org](mailto:nkelly@westernresources.org)



Sarah Wright  
Executive Director  
Utah Clean Energy  
1014 2nd Avenue  
Salt Lake City, UT 84103  
[sarah@utahcleanenergy.org](mailto:sarah@utahcleanenergy.org)  
[kevin@utahcleanenergy.org](mailto:kevin@utahcleanenergy.org)  
[brandy@utahcleanenergy.org](mailto:brandy@utahcleanenergy.org)

Stephen J. Baron  
J. Kennedy & Associates  
570 Colonial Park Drive, Suite 305  
Rosewell, GA 30075  
[sbaron@jkenn.com](mailto:sbaron@jkenn.com)

Betsy Wolf  
Utah Ratepayers Alliance  
Salt Lake Community Action Program  
764 South 200 West  
Salt Lake City, UT 84101  
[bwolf@slcap.org](mailto:bwolf@slcap.org)  
[cjohnson@ieee.org](mailto:cjohnson@ieee.org)

Dale Gardiner  
Van Cott, Bagley, Cornwall &  
McCarthy  
36 South State Street, Suite 1900  
Salt Lake City, Utah 84111  
[dgardiner@vancott.com](mailto:dgardiner@vancott.com)

Leland Hogan  
President  
Utah Farm Bureau Federation  
9865 South State Street  
Sandy, Utah 84070  
[leland.hogan@fbfs.com](mailto:leland.hogan@fbfs.com)

Gregory B. Monson  
Stoel Rives LLP  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111  
Telephone No. (801) 578-6946  
Facsimile No. (801) 578-6999  
[gbmonson@stoel.com](mailto:gbmonson@stoel.com)