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**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. 09-035-23 <b>UTAH OFFICE OF CONSUMER SERVICES' RESPONSE TO ROCKY MOUNTAIN POWER'S MOTION FOR STAY AND REQUEST FOR RECONSIDERATION OF OCTOBER 19, 2009 MSP ORDER</b>
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The Utah Office of Consumer Services responds to Rocky Mountain Power's motion requesting that the Commission stay the requirements of its October 19, 2009 MSP order, and to reconsider and vacate the order. The Office also addresses the Order. In summary, the claimed legal barriers to the Commission's order are, in the Office's view, incorrect. Nothing that Rocky Mountain Power has said concerning the Commission's authority to act independent of the MSP process, and nothing in its analysis of the *ex parte* communications statute should cause the Commission to hesitate to act on the

MSP issues, including participation with the MSP Standing Committee in all meetings and conferences. However, there are practical complications to the introduction of MSP rate impact issues at this time, in this general rate case.

The Office does not agree with Rocky Mountain Power's severe and limiting interpretation of the Commission's authority. Utah's public utility statutes grant the Commission broad authority and discretion to supervise and regulate every Utah public utility, and all of the business of every Utah public utility, by means of specifically designated, necessary or convenient powers and jurisdiction. *Utah Code Ann. §54-4-1 (2004)*. The October 19 Order reasonably exercises this authority in order to investigate MSP's impact upon Utah retail customers.<sup>1</sup>

The Commission gave notice in 2004 that such an investigation would occur should the MSP stipulation: "...result in significantly different impacts on Utah than now expected. If the projected savings to Utah in the later years, which substantially offset the increases in the early years, do not materialize, we may reconsider the further use of the Stipulation."<sup>2</sup> The Commission also anticipated the arguments that Rocky Mountain Power is making today, that the Commission

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<sup>1</sup> Rocky Mountain Power's "parade of horrors" on page 7 and 8 of the motion, is unfounded, yet partially describes the importance of MSP to the ratemaking process in Utah.

<sup>2</sup> The fact that parties to Rocky Mountain Power's 2009 general rate case did not raise the issues is irrelevant to the scope of the Commission's authority. The Commission's authority and jurisdiction is not confined to only those issues raised by the parties. *See Utah Code Ann. 54-4-4(2) (2004)*.

must defer to the Revised Protocol, plainly stating: “The Stipulation cannot restrict future regulatory review and changes if it no longer produces results that are just, reasonable, and in the public interest.”

The scope of the investigation required by the October 19 order does not infringe on any parties’ due process rights. Requesting that parties submit information pertaining to the actual impacts of the Revised Protocol method compared to the forecasted impacts upon which the MSP is based, is well within the Commission’s prerogative. *Utah Code Ann. §§54-4-2 and -4 (2004)*. However, as the Division of Public Utilities points out, inter-jurisdictional regulatory issues are complex and significant, not only to the pending general rate case, but to retail rates in the long-term. Other states with an interest in the MSP stipulation and revised protocol method are also proposing changes that require study. The discovery and analysis of such issues, and the preparation of testimony, requires more time than is available in the pending rate case. The Office agrees with the Division that the Commission’s participation and monitoring of the MSP process is important to the Commission’s consideration of the rates that result. The question is not whether the Commission may reconsider the MSP process in this docket, but whether the public interest is better served by considering the continued use of the MSP revised protocol in a context other than this general rate case.

It is very important that the Commission continue to participate in the MSP Standing Committee, its initiatives to alter, amend or discontinue the MSP

process, and to inform itself of other states' proposals for alternative inter-jurisdictional regulation; all of which are important to the Commission's decision making. The Commission's participation is facilitated through a proper interpretation of Utah Code Ann. §54-7-1.5 (2004).

No member of the Public Service Commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, shall make or knowingly cause to be made to any party any communication relevant to the merits of any matter under adjudication *unless notice and an opportunity to be heard are afforded to all parties*. No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, an *ex parte* communication relevant to the merits of any matter under adjudication. Any member of the commission, administrative law judge or commission employee who receives an *ex parte* communication *shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information*. [Emphasis added.]

*Ex parte* communications with the Commission are implicitly defined as communications between the Commission and one party only, or with respect to or in the interest of one party only, and to which no other party has the opportunity to reply. The statute requires only that parties refrain from *ex parte* contact with the Commission or its staff, not all communications with the Commission or its staff.

All that is required of the Commission as it participates in the MSP process is to give notice that it will participate and assure that in the process all parties are afforded an opportunity to be heard. Communications with the Commission can be placed into the public record of both proceedings, so that other parties have an

opportunity to comment. Indeed, the MSP Standing Committee Administrative Guidelines require such notice and opportunity. The Guidelines are intended to ensure wide dissemination of information regarding MSP Standing Committee meeting locations and dates and information relating to its activities; ensure open participation in MSP Standing Committee meetings by all interested persons; and, the MSP Standing Committee is to be responsive to and hear input from all stakeholders in an open meeting process.

The authority and jurisdiction to act also includes the discretion not to. The practical complications the Office refers to above are simply described. In the Office's view, there is not sufficient time in this general rate case to gather the facts, perform complex analysis and prepare the substantial evidence upon which the Commission may rely in making a decision upon the future use of the MSP protocol. Underlying Rocky Mountain Power's petition are identifiable and judicious reasons why the issue of the MSP stipulation in relation to just and reasonable rates for Utah retail customers may be more effectively dealt with, and the Commission's jurisdiction more effectively exercised, in a purposeful inquiry conducted in the manner and within a time limit that the Commission establishes.<sup>3</sup>

The Commission should examine whether the conditions precedent and subsequent to Utah's use of the MSP revised protocol, and the rates that are determined by this model, are in the public interest. This examination could be in

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<sup>3</sup> The Office does not agree with Rocky Mountain Power's assertion of the 240-day time limit as a limit to the Commission's consideration of the MSP issues. However, it is a complicating factor.

a separate and parallel docket, but the Office recommends that the Commission first proceed with an analysis of the Utah public interest in the current MSP structure and in alternatives, as provided for by the MSP stipulation. In either event, the Commission should establish its informational and analytical needs and a timetable that will permit the Commission to act prior to January 1, 2011. The Office believes that this process, rather than this general rate case, will better serve Utah ratepayers.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of November 2009.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Response was served upon the following by electronic mail sent on November 2, 2009:

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