- 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 ORDER DENYING REQUEST TO STRIKE AND ORDER EXTENDING FILING DATE OF REBUTTAL TESTIMONY

ISSUED: November 12, 2009

By The Commission:

By motion filed November 9, 2009, Rocky Mountain Power (RMP) requested the Commission strike the Pre-Filed Supplemental Direct Testimony of Michael J. McGarry, Sr., Matthew Croft, and Thomas C. Brill (Supplemental Testimony) filed on behalf of the Utah Division of Public Utilities (DPU) on October 29, 2009. RMP argued striking the Supplemental Testimony was proper in that the DPU had filed the testimony after the deadline set for the filing of Direct Testimony. In addition, RMP claimed the late filing prejudiced RMP's ability to conduct discovery and prepare responsive testimony, in the time remaining for the filing of its rebuttal testimony, to what it claimed were new issues raised in the DPU testimony. On October 29, 2009, the DPU also filed the Supplemental Direct Testimony of George W. Evans. In its motion, RMP acknowledged Mr. Evans' testimony was filed past the deadline because of difficulties Mr. Evans had in obtaining spreadsheets and other information, from RMP, related to the matter addressed in his testimony. Because of this, RMP did not request Mr. Evans' Supplemental Testimony be stricken, even though it as well was filed past the direct-testimony-filing deadline. RMP also requested an extension of time, to November 25, 2009, to file rebuttal

testimony relating to the issues raised by the October 29, 2009, testimony of Messrs. McGarry, Croft, Brill and Evans. RMP requests an expedited resolution of its motion and requests.

On November 12, 2009, the DPU filed its responsive pleading to RMP's motion. The DPU noted the Supplemental Testimony of Messrs. McGarry and Croft contained two supplemental adjustments that had been explained in their Direct Testimony, which had been filed on the direct-testimony due date. The DPU explained the adjustments contained in the Direct Testimony had not been finalized because data request responses from RMP were still outstanding when the direct testimony was prepared and filed. Further, the Supplemental Testimony explains corrections to Messrs. McGarry and Croft's Direct Testimony and contains an explanation of other issues that have been resolved between the parties without any need for further adjustments. The DPU explained the Supplemental Testimony of Mr. Brill contains no adjustments, but simply summarizes six corrections to the DPU's Direct Testimony, includes the agreed-to-SMUD adjustment (which was erroneously left out of an exhibit to the Direct Testimony), summarizes the Supplemental adjustments made by Croft, McGarry and Evans and provides the impact of the recent tax stipulation. Mr. Brill's Supplemental Testimony provides the impact of these corrections and adjustments on the DPU's rate spread recommendation. The DPU states it does not object to allowing RMP a reasonable time to respond to these issues, but believes a more reasonable response date would be by noon, November 23, 2009, rather then November 25, 2009.

The DPU argues the Supplemental Testimony of Messrs. McGarry, Croft, and Brill should not be stricken. The DPU argues parties have an obligation to advise the Commission and parties of corrections to testimony as soon as they can reasonably make them

known. Contrary to RMP's practice suggestion, that errors in previously filed testimony should be identified and corrected in the subsequent round of testimony a party files, the DPU argues the expected practice should be that corrections are made known to the Commission and to other parties as soon as any party knows there are errors. The DPU's position is that parties have an obligation to disclose errors or corrections when they become known.

Additionally, for Messrs. Croft and McGarry's Supplemental Testimony, the DPU notes changes relate to two specific adjustments that were described in detail in their Direct Testimony. These are not "new" issues, but only a change in the exact level or dollar amount of the adjustments due to the subsequent data responses received from RMP. The DPU agues this type of adjustment is distinguishable from a new adjustment that was not raised or adequately described in direct testimony, but surfaces for the first time in supplemental testimony. The DPU argues parties are faced with two choices in this circumstance: they can describe the issue in direct testimony (as the DPU did in its direct testimony), to make clear the conceptual basis of an adjustment (thus allowing other parties to begin their analysis of the issue) and 1. provide a preliminary adjustment amount or no specific dollar amount for the adjustment and then update the adjustment when the correct adjustment level is determined based upon the responses to the data request(s) or, 2. exclude the entire line item and then provide a corrected number after receipt of data request responses. The DPU argues the latter practice is not uncommon in rate cases, and several examples can be seen in the present case. For the adjustments contained in the Supplemental Testimony, the DPU states it felt that it was not appropriate to make an adjustment removing the item in its entirety in its Direct Testimony and then wait until the filing of Rebuttal Testimony to reveal what the DPU views is an accurate adjustment level. Instead, the DPU felt

fairness to RMP dictated the filing of Supplemental Direct testimony that provided the Company with more time to respond in RMP's rebuttal testimony, rather than having to wait for the numbers to be revealed in the DPU's rebuttal testimony and RMP be limited to addressing it in RMP's surrebuttal testimony.

Relative to RMP's argument of prejudice in obtaining discovery and preparing testimony, the DPU points out that RMP has not submitted any data requests for the adjustments at issue. RMP has never submitted any data requests, not when the issues were raised in DPU Direct Testimony, nor since the Supplemental Testimony was filed. Since RMP has not pursued discovery on the issues, the DPU does not believe RMP has been prejudiced and has adequate ability and time to respond to the adjustments proposed by Messrs. McGarry and Croft. Since Mr. Brill's testimony is simply a summary (not a substantive analysis or argument of the issues) and demonstrative of the application of the adjustments to the DPU's spread recommendation, RMP is not prejudiced by the timing of his Supplemental Testimony. As noted, the DPU does not object to RMP receiving some delay to respond to Mr. Evans' testimony.

In reviewing the parties' arguments and the testimony at issue, we agree with the DPU's position. We agree that where errors are discovered, a party should make the existence of an error known as soon as possible. We also agree the course the DPU followed, relative to the adjustments suggested by Messrs. McGarry and Crof, was reasonable. The DPU raised and described the adjustment in direct testimony, tried to quantify the adjustment, based on the information it had at the time, indicating a different dollar amount may be warranted (based on information RMP was to provide). We agree that this process did not raise a "new" issue in the supplemental testimony.

We also view the revision was not so extensive as to prejudice RMP's ability to respond to the adjustments. RMP knew of the DPU's adjustments, why they were proposed and the basis by which the DPU was calculating the adjustment. Indeed, since the remaining information (in response to the outstanding data requests) was solely in RMP's possession. RMP, itself, first had the information upon which the DPU would arrive at the adjustment level to be contained in the Supplemental Testimony. The basis and supporting data upon which the revision is based was known by RMP and the adjustment level reasonably calculable by RMP prior to the DPU even filing the Supplemental Testimony. This is not an instance where one party's revision or plan to revise was unknown to the other party. Nor was the extent or scope of the revision extensive. The change was to two specific adjustments, not, e.g., a multifaceted revision to the utility's net power costs projection for the test year. RMP has not had the need to conduct discovery for the adjustments contained in the Supplemental Testimony nor that of Mr. Evans. In light of this and the nature of the adjustments contained in the October 29, 2009, testimony, we also agree RMP should be able to respond to the Supplemental Testimony by November 23, rather than November 25.

Wherefore, we enter this ORDER whereby we

1. Deny RMP's request to strike the testimony filed by the DPU on October 29, 2009.
2. Grant RMP's request to extend the filing date of testimony that responds to the October 29, 2009, DPU testimony, but set the extended time to November 23, 2009, 12 noon.

DATED at Salt Lake City, Utah this 12th day of November, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#64324