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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

**ROCKY MOUNTAIN POWER'S REPLY  
TO UIEC'S POST-HEARING BRIEF**

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Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or "Company"), pursuant to Utah Code Ann. § 63G-4-206(1)(d) and Utah Admin. Code R. 746-

100-3.I(2), provides this Reply to an issue raised in the Post-Hearing Brief of the Utah Industrial Energy Consumers (“UIEC”). The Company’s limited reply relates to an unquantified adjustment UIEC proposed for the first time after the hearing in this proceeding, a proposal to update net power costs (“NPC”) to reflect revenues from the Nevada Energy (“Nevada Energy”) contract. This is an entirely new contract, distinguishing it from the contract revisions and modifications to existing NPC-related contracts included in the Company’s rebuttal. The Nevada Energy contract was not approved by the Nevada Commission until December 2, 2009, after all of the testimony in this case was submitted.

The Company requests that the Public Service Commission of Utah (“Commission”) reject UIEC’s adjustment because: (1) consideration of the adjustment at this late stage of the proceeding is contrary to Commission rules and would violate the Commission’s standards of fundamental fairness; and (2) the adjustment has no evidentiary basis in the record.

## **I. BACKGROUND**

UIEC raised its proposed Nevada Energy contract adjustment for the first time in its Response to Public Service Commission’s NPC Data Request (“Response”) on December 23, 2009. Although the Commission’s website shows that UIEC filed its Response on that date and the Response includes a certificate of service, Rocky Mountain Power did not receive a copy of the Response. As a result, the Company learned of UIEC’s new adjustment on January 11, 2010, when UIEC filed its Post-Hearing Brief.

UIEC did not present a witness to sponsor evidence related to the adjustment, nor did it present data requests substantiating any aspect of the adjustment. UIEC did not include any reference to the adjustment in the Joint Issues Matrix, filed on December 2, 2009. Instead, UIEC raised the issue for the first time in the cross-examination of Company witness Greg Duvall and

Office of Consumer Services (“OCS”) witness Randy Falkenberg. Based solely on the limited cross-examination of these two witnesses, UIEC proposed its unquantified NPC adjustment in its Response. UIEC stated that the evidence supporting its adjustment was based on the contract itself, UIEC’s cross-examination of Randy Falkenberg, and the Intercontinental Exchange Index.

## **II. ARGUMENT**

### **A. UIEC’s Surprise Adjustment Is Untimely, Violates the Commission’s Rules and Is Fundamentally Unfair.**

UIEC proposed its adjustment only after the conclusion of the hearing and bases the adjustment solely on its cross-examination of other parties’ witnesses. The Commission requires parties to present their positions and supporting evidence through the parties’ own witnesses. *See, e.g., Re. Application of Rocky Mtn. Power for Authority to Increase its Retail Electric Utility Service Rates in Utah*, Docket No. 07-035-93, Modification of Scheduling Order (Feb. 13, 2008). Rule 746-100-10K states that “the Commission discourages and may prohibit parties from making their cases through cross-examination.” The Commission should reject UIEC’s adjustment as contrary to Commission policy and rules.

In addition, the fact that UIEC first proposed the adjustment in its Response, which the Company did not even receive, underscores the unfairness of considering UIEC’s adjustment at this late date. The Commission’s rules prevent “trial by ambush” by requiring parties to provide access to their pre-filed testimony for a “reasonable time before it is presented,” a period normally considered to be at least ten days. Rule 746-100-10G. UIEC’s conduct here—providing notice of its adjustment only after the hearing was concluded—is inconsistent with the Commission’s normal policy requiring reasonable notice of evidence before it is presented at hearing.

UIEC's last-minute adjustment is prejudicial to the Company. The Company was unable to conduct discovery, present its own witnesses or cross-examine UIEC's witnesses to respond to UIEC's adjustment. The timing of the adjustment does not allow the Company an opportunity "to be heard and defend in an orderly proceeding," as is required in Commission proceedings. *See R.W. Jones Trucking Inc. v. Pub. Serv. Comm'n of Utah*, 649 P.2d 628, 629 (Utah 1982). The Commission should reject UIEC's adjustment.

**B. UIEC's Adjustment Has No Evidentiary Basis.**

There is no evidentiary basis for UIEC's adjustment in the record. UIEC has not proven that its adjustment is based on a known and measurable NPC contract change, limited in scope and readily verifiable by the parties. *Cf. Post-Hearing Brief of Rocky Mountain Power at 17-20; see, e.g., Utah Dept. of Business Regulation v. Public Service Comm'n of Utah*, 614 P.2d 1242, 1248 (Utah 1980). As UIEC acknowledged in its response to OCS's Motion in Limine, "This is not a true-up rate scenario, but a matter where credibility and burden of proof are at play." Response of UIEC to Motion in Limine at 3 (Dec. 7, 2009).

Most basically, UIEC has not even provided a calculation of its adjustment. UIEC states that the calculation for the adjustment is set forth in UIEC's cross-examination of Randy Falkenberg, where he states:

It's a straightforward calculation. You would just simply enter the terms and conditions of the contract into the test year and run the model. What I suspect would happen is that the pricing contract was based on an index plus an adder. I think that the index would roughly approximate the actual cost, so that the impact on power cost would probably be to reduce power cost by the amount of the adder times the volume of sales.

Tr. 693, l. 22-694, 5. These statements are the full extent of UIEC's evidence supporting the calculation of its adjustment. This testimony is qualified, does not address the fact that the

contract would only be in effect during a portion of the test year,<sup>1</sup> implies that the value of the contract is associated with renewable energy credits, not NPC,<sup>2</sup> and does not actually quantify UIEC's adjustment. Mr. Falkenberg's testimony is not substantial evidence on which the Commission could base an adjustment.

The Commission rejected a similarly unsupported, after-the-fact adjustment proposed by UIEC in the Company's 2007 rate case and should do so again here. *See Re. Application of Rocky Mtn. Power for Authority to Increase its Retail Electric Utility Service Rates in Utah*, Docket No. 07-035-93, Erratum Report and Order on Revenue Requirement at 95 (Aug. 21, 2008) (rejecting UIEC's proposed adjustment to the Company's load forecasts and allocation factors).

### III. CONCLUSION

Rocky Mountain Power respectfully requests that the Commission reject UIEC's adjustment because it is an untimely adjustment, it is contrary to Commission rules and policy and there is insufficient evidence in the record on which to base an adjustment.,

RESPECTFULLY SUBMITTED: January 20, 2010.

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<sup>1</sup> In footnote 5 of its Post-Hearing Brief, UIEC refers to Mr. Falkenberg's December 31, 2009, testimony in Oregon as to the impact of the contract "not for the truth of the matter," but "as an example of the magnitude of what such costs might be." This is an improper and misleading citation because, among other reasons, the test year in Oregon is calendar year 2010, capturing an additional six months of the contract over that covered by the Utah test year.

<sup>2</sup> UIEC's adjustment is for NPC only; UIEC has not proposed any adjustment to renewable energy credits in this case.