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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Rocky Mountain Power's
Advice No. 09-08, Schedule 193 – Demand
Side Management (DSM) Cost Adjustment.

Advice No. 09-08

**PETITION TO INTERVENE OF THE
UTAH INDUSTRIAL ENERGY
CONSUMERS**

AND

**PROTEST AND REQUEST FOR
HEARING**

In accordance with the provisions at Utah Code Ann. § 54-7-12.8 and § 63G-4-201, and Rules R746-100-7 and R746-405 of the Public Service Commission's Rules of Practice and Procedure, Holcim, Inc., Kennecott Utah Copper, LLC, Kimberly-Clark Corp., Malt-O-Meal, Praxair, Inc., Proctor & Gamble, Inc., Tesoro Refining and Marketing Co., and Western Zirconium (this group of electrical power customers will be referred to hereinafter, for convenience only, as the "Utah Industrial Energy Consumers" or "UIEC"), hereby petition the Public Service Commission ("Commission") for leave to intervene in the above-referenced

proceeding, and hereby protest Advice No. 09-08 and request that the Commission hold a hearing on this matter.

I. PETITION TO INTERVENE

In support of their Petition to Intervene, the UIEC state as follows:

1. On June 11, PacifiCorp (d.b.a. Rocky Mountain Power Company) (“Rocky Mountain” or “RMP”) filed Advice No. 09-08 with the Commission requesting an effective date of August 1, 2009 for its third Revision of Sheet No. 193.2, Schedule 193, Demand Side Management (DSM) Cost Adjustment.

2. The consumers herein referred to as UIEC are a group of industrial consumers who each take electrical service from Rocky Mountain.

3. The UIEC consumers have joined together for the purposes of intervention in this docket to have their common interests represented. The interests of each of the UIEC consumers will not be adequately represented by any other party to this proceeding.

4. The consumers herein referred to as UIEC have a direct, immediate, and substantial interest in this proceeding as customers of Rocky Mountain because the rate they pay for electric service will be affected by a Commission decision on Rocky Mountain’s Advice Letter and proposed tariff revisions.

5. If the UIEC consumers are granted leave to intervene in this proceeding, they hereby request that service of all pleadings, notices, etc. be made to the following:

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6. The interests of justice and the orderly and prompt conduct of this proceeding will not be impaired by the grant of the UIEC's Petition to Intervene.

7. Pursuant to Utah Code ann. § 54-7-12.8(4), the UIEC consumers are submitting concurrently herewith a Protest and Request for Hearing on Advice No. 09-08, as set forth below. Apart from the positions stated therein, the UIEC consumers have not yet determined the level of their participation or the precise nature of the relief the UIEC will seek, but request that the Commission grant the UIEC intervention as their interests may appear.

WHEREFORE, the UIEC request that the Commission enter an Order granting the consumers herein referred to as the UIEC permission to intervene in this docket and to participate to the full extent allowed by the law.

II. PROTEST AND REQUEST FOR HEARING

In support of their Protest and Request for Hearing, the UIEC states as follows:

1. On June 11, PacifiCorp (d.b.a. Rocky Mountain Power Company) ("Rocky Mountain" or "RMP") filed Advice No. 09-08 with the Commission requesting an effective date of August 1, 2009 for its third Revision of Sheet No. 193.2, Schedule 193, Demand Side Management (DSM) Cost Adjustment. Advice No. 09-08 seeks to impose an increase of approximately 4% (in addition to the existing 2.1% surcharge) to recover an estimated \$85.4 million in forecasted annual investment in energy efficiency and load management measures. Although the UIEC supports the acquisition of cost-effective DSM measures, they do not believe that the Company's proposed surcharge should be imposed for the reasons set out below.

2. In 2008, the Utah Legislature passed the Energy Resource and Carbon Emissions Reduction Initiative, which among other things, provided that the Commission must implement a process for the issuance, monitoring, accounting, transferring and use of renewable energy certificates (“REC”). Senate Bill 202 (2008) *codified at* Utah Code Ann. § 54-17-601 *et seq.* The law requires that certificates shall be issued for certain “activities of an energy user,” which expressly include demand side management measures. *Id.* at 54-17-603(4); 54-17-601(10)(e). Certificates may be traded, transferred, sold or banked, but the statute is clear that “users,” not just generators of power, are eligible to receive them. *Id.* Thus, the utility is no longer the exclusive provider of energy efficiency and load management services. The law now provides that an individual consumer who undertakes DSM measures will be entitled to realize the value of that investment through the resulting RECs, which would be owned by the consumer.

3. Section 54-7-12.8 allows the Commission to approve a DSM tariff “either with or without a provision allowing an end-use customer to receive a credit against the charges imposed under the tariff for electric energy efficiency measures.” While the Commission has heretofore had discretion to allow such an “opt-out” provision, the REC statute now makes it mandatory for the Commission to issue RECs to users who undertake their own DSM measures.

4. To comply with the REC statute, especially given the context of the Company’s present request to dramatically increase DSM surcharges, the Commission should take this opportunity to reexamine DSM cost recovery and the self-directed DSM tariffs, and to implement a method by which customers who have or wish to undertake their own energy efficiency and load management measures may opt out of utility DSM programs and surcharges.

Several states have adopted provisions that allow customers to opt out of Company-directed and funded DSM, among them North Carolina (Duke Energy), Texas and Ohio.

5. The UIEC do not advocate a specific opt-out proposal at this stage of the present proceeding. But, the UIEC suggest that an appropriate opt-out provision exempt industrial customers from becoming subject to the surcharges under schedule 193 if the customer implements or has implemented alternative conservation measures which are similar to those identified under section 54-17-601(10), or which would otherwise be eligible either for RECs under Utah's statute or for energy credits under any similar federal law.

6. Industrial customers who have not taken advantage of DSM programs but who have made or will make investment in energy efficiency and load management measures should be allowed to opt out of DSM immediately. For many industrial customers, energy is a large, if not the largest, component of their costs. That fact has compelled them to continually find cost-effective ways to reduce their demand and consumption. Not allowing customers who have made investment in energy conservation to opt out of DSM surcharges would penalize those customers for early action. The Commission's policy should be to encourage, not penalize the implementation of cost-effective energy conservation measures.

7. Customers who have taken advantage of DSM financing in the past should be required to bear a reasonable surcharge for a period of time to allow recovery of the Company's DSM investment before being able to opt out. Likewise, any customer electing to opt out of Company-sponsored DSM should be able to later opt back in, as long as such customer stays in until the Company has recovered its investment in the customer-specific DSM measure. Regardless of the mechanism ultimately adopted, an opt-out provision should be tailored to allow

the Company to make and recover its prudent investment in cost-effective DSM, while also allowing customers to make individual investments in conservation measures and to receive the benefit of RECs as intended by the Utah Legislature.

8. The UIEC urge the Commission to suspend Advice No. 09-08 while the Commission considers specific proposals and comments from interested parties on the best opt-out method in light of the REC statute, federal legislation, and the current DSM regime in Utah.

9. Apart from an opt-out provision (which the UIEC view as mandated by the REC statute), the UIEC are also concerned that the level of the proposed surcharge is excessive and results in unjust and unreasonable rates to customers who have been anticipating an approximately 2% increase in the DSM surcharge. Since 2003, the Company's expenditures for DSM have slowly crept upward from less than 1% in 2003 to 2% presently. There was little in the prior proceedings or tariffs that would have apprised customers that the cost of the Company's DSM would ever reach 6%. As recently as April of this year, RMP indicated that the DSM surcharge increase would be 2.3%. Certainly, those customers who have been participating in programs did not have reasonable notice that such costs would be imposed. In the wake of rapidly successive rate-case increases, the end of which is nowhere in sight, it is manifestly unfair for the Company to have lulled customers into acquiescence in allocating a small amount of investment to DSM only to suddenly treble the surcharge. Especially for customers whose cost of doing business is primarily driven by their energy costs, the rate shock represented by an unanticipated 4% increase is unjustly burdensome.

10. In view of the Company's request for \$85.4 million, it would also be appropriate for the Commission to review in this docket whether the cost-effectiveness tests applied to the

Company's DSM programs remain valid. When those tests were adopted as a criterion for deciding whether the Company should acquire a particular DSM measure, the system was experiencing substantial load growth in a climate of rising costs. Today, the opposite situation exists. The UIEC encourage the Commission, before approving the proposed tariff revisions, to require a showing that the DSM programs in which the Company proposes to invest, and for which it seeks cost recovery, remain cost-effective in the present economic environment.

11. Finally, the Commission should take the opportunity in this proceeding to review the prudence of the Company's acquisition of \$85 million in DSM during a period of declining power costs and declining load. Even though the Commission may have approved the DSM programs for which the Company seeks cost recovery through the proposed tariff, it may have been imprudent for the Company to aggressively pursue DSM when power costs and load characteristics were so dramatically changing. An order of the Commission approving DSM programs or allowing recovery of a certain level of DSM investment should not be viewed as license for the Company to engage in imprudent acquisition practices. The Company has a responsibility to manage the approved programs in a way that accounts for changing conditions. When circumstances occur that might render acquisition of DSM resources imprudent, the Company must respond accordingly by curtailing program spending, perhaps returning to the Commission for review of the programs, and/or otherwise taking steps to ensure that customers are not being charged for unneeded resources and expenditures.

12. For the foregoing reasons, the UIEC request that, pursuant to Section 54-7-12.8(4)(a), the Commission suspend the proposed tariff and set a schedule for further proceedings (a) to consider proposals for an appropriate opt out provision; (b) to determine

whether the magnitude of the proposed surcharge will result in just and reasonable rates; (c) to review the cost effectiveness of present DSM programs, and (d) to examine the prudence of the Rocky Mountain Power's decision to continue DSM programs in the face of changing load and price characteristics.

DATED this __23rd__ day of June, 2009.

/s/ William J. Evans

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CERTIFICATE OF SERVICE

(Advice No. 09-08)

I hereby certify that on this 23rd day of June 2009, I caused to be sent by electronic mail and by U.S. mail, a true and correct copy of the foregoing **PETITION TO INTERVENE,**

PROTEST AND REQUEST FOR HEARING to:

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