

& Power is currently providing service to nearly 9,000 customers of which nearly 3,000 are located outside the municipal boundaries of the Members.

Rocky Mountain Power and Heber Light & Power have had a longstanding dispute regarding (a) the authority of Heber Light & Power to provide retail service to customers located outside the municipal boundaries of the Members and (b) the authority of Rocky Mountain Power to serve customers in the area that Heber Light & Power regards as its historical service area. This dispute came to a head on April 14, 2007, when Wasatch County notified Rocky Mountain Power that the Wasatch County Council would consider a partial revocation of its franchise to exclude areas Heber Light & Power considered to be within its service area. This potential action resulted in litigation in district court and before the Commission. The district court litigation was dismissed after Wasatch County agreed not to modify or revoke Rocky Mountain Power's current franchise.

In Docket No. 07-035-22, Rocky Mountain Power filed a complaint and amended complaint seeking an order of the Commission that Heber Light & Power was not authorized to provide retail electric service outside the boundaries of its Members or clarifying the obligation of Rocky Mountain Power to provide service in areas served by Heber Light & Power. Heber Light & Power moved the Commission to dismiss Rocky Mountain Power's amended complaint for lack of jurisdiction. The Commission issued a Report and Order on November 3, 2008 denying Heber Light & Power's motion. Heber Light & Power appealed that decision to the Utah Supreme Court. On April 30, 2010 the Supreme Court reversed the Commission's order on the ground that the Utah Legislature had not granted the Commission jurisdiction to regulate

Heber Light & Power and that questions regarding Heber Light & Power's authority to serve customers outside the municipal boundaries of its Members must be addressed in district court.

Heber Light & Power Co. v. Utah Public Service Comm'n, 2010 UT 27, 231 P.3d 1203.

Prior to and during the course of the litigation, Rocky Mountain Power and Heber Light & Power engaged in settlement discussions. During the 2010 General Session of the Utah Legislature, Heber Light & Power and Rocky Mountain Power resumed settlement discussions and reached agreement on a settlement in principle. Pursuant to that agreement, the parties supported passage of Senate Bill 227, 1st Substitute, as amended (SB 227), which was introduced in the 2010 General Session of the Utah State Legislature. SB 227 amended Utah Code Ann. § 11-13-204 to allow an energy services interlocal entity such as Heber Light & Power to provide service to customers located in a geographic area outside the municipal boundaries of its members (Area) pursuant to agreement with the public utility authorized and obligated to provide service in the Area that the energy services interlocal entity would be responsible to provide service in accordance with conditions in the legislation and subject to approval of the agreement by the Commission and deletion of the Area from the geographic area in which the public utility is obligated to provide service. SB 227 was passed by the Legislature on March 11, 2010 and signed by Governor Herbert on March 29, 2010. The amendment to section 11-13-204 became effective on May 10, 2010. Utah Constitution, art. VI, § 25.

Heber Light & Power and Rocky Mountain Power entered into the Settlement Agreement on October 15, 2010. Subject to Commission approval, the Settlement Agreement resolves the dispute between the parties that led to Docket No. 07-035-22 and other litigation and

provides that Heber Light & Power will be responsible to provide service to customers in an area described and shown in Appendices 5 and 6 to the Settlement Agreement (HLP Service Area), in accordance with the requirements of section 11-13-204(7)(c).

On November 4, 2010, Rocky Mountain Power filed an Application for Approval of Settlement Agreement and Amendment of Certificate of Public Convenience and Necessity (Application) in this proceeding. Testimony of three witnesses, Mark C. Moench, Senior Vice President and General Counsel of PacifiCorp, Blaine Stewart, General Manager of Heber Light & Power, and Craig Broussard, former General Manager of Heber Light & Power, was submitted in support of the Application. A duly noticed scheduling conference was held on November 22, 2010, and the Commission issued a Scheduling Order on the same day. Following discovery, the Division of Public Utilities (Division) and the Office of Consumer Services (Office) submitted comments on the Application on December 21, 2010. The Division and Office supported the Application, subject to the understanding that the ratemaking impacts of the transfers of facilities resulting from the Settlement Agreement would be subject to future ratemaking determinations. In accordance with the Scheduling Order, Rocky Mountain Power published notice of a hearing and public witness hearing to be held in the matter on January 10, 2011 in the Wasatch Wave for two consecutive weeks prior to the hearing.

A hearing was held before the Commission on January 10, 2010 at which the testimony of Messrs. Moench, Stewart and Broussard was admitted without objection. In addition, the statements of the Division and Office were admitted as the testimony of Dr. Joni

Zenger and Ms. Cheryl Murray, respectively, again without objection. No one appeared in opposition to the Application.

A public witness hearing was also held on January 10, 2010 in the Heber City Council Chambers in Heber City Offices. Two public witnesses, John Blickenstaff and Ben Fitzgerald, provided unsworn statements. Neither of the public witnesses opposed the Application.

FINDINGS OF FACT

Based on the Application and the testimony submitted in this matter, the following facts are undisputed:

1. On September 28, 2010, Wasatch County granted Rocky Mountain Power a franchise authorizing Rocky Mountain Power to use public rights of way in Wasatch County to provide electric service to customers in Wasatch County outside the HLP Service Area subject to the terms and conditions of the franchise (RMP Franchise). The RMP Franchise is effective when an order of the Commission approving the Application (Order) becomes a final order as defined in the Settlement Agreement (Final Order). A copy of the RMP Franchise is attached to the Settlement Agreement as Appendix 1.

2. Heber Light & Power is an energy services interlocal entity. It was created on or about September 9, 2002, and is comprised solely of Utah municipalities. Prior to July 1, 2010, Heber Light & Power had been providing retail electric service to a substantial number of customers outside the municipal boundaries of its Members for well in excess of the statutory requirement of 50 years.

3. On May 21, 2008, Wasatch County granted Heber Light & Power a franchise authorizing Heber Light & Power to use public rights of way in portions of Wasatch County for the purpose of providing electric service in a designated area subject to the terms and conditions of the franchise. The franchise generally complied with the conditions that would be included in section 11-13-204(7). On September 28, 2010, the franchise was amended to conform the service area to the HLP Service Area effective when an order of the Commission approving the Application becomes a Final Order (Wasatch County Franchise). A copy of the Wasatch County Franchise is attached to the Settlement Agreement as Appendix 2.

4. On October 6, 2008, the Town of Daniel granted Heber Light & Power a franchise authorizing Heber Light & Power to use public rights of way within the town for the purpose of providing electric service to residents of the town subject to the terms and conditions of the franchise. On October 4, 2010, the franchise was amended to comply with section 11-13-204(7) effective when an order of the Commission approving this Application becomes a Final Order (Daniel Franchise). A copy of the Daniel Franchise is attached to the Settlement Agreement as Appendix 3.

5. On November 2, 2010, the Town of Independence granted Heber Light & Power a franchise, compliant with section 11-13-204(7), authorizing Heber Light & Power to use public rights of way within the town for the purpose of providing electric service to residents of the town subject to the terms and conditions of the franchise (Independence Franchise). A copy of the Independence Franchise is attached to the Settlement Agreement as Appendix 4.

6. Rocky Mountain Power and Heber Light & Power have had a longstanding dispute regarding: (a) the authority of Heber Light & Power to provide retail service to customers located outside the municipal boundaries of its Members, (b) the authority of Rocky Mountain Power to serve customers within the area that Heber Light & Power regards as its historical service area, (c) the obligation of Rocky Mountain Power to pay impact fees for electricity in excess of the amount specified in the Power Sale Agreement between Heber Light & Power Company and Utah Power & Light dated December 17, 1993 (Power Sale Agreement), and (d) whether Rocky Mountain Power's transmission and distribution line proceeding in a southerly direction from Rocky Mountain Power's Jordanelle Substation on the east side of Highway 40 trespasses on property of Heber Light & Power (collectively the Disputes).

7. The parties have had numerous meetings and communications to attempt to settle their Disputes.

8. SB 227 created a framework for resolution of the Disputes regarding provision of service in areas outside the municipal boundaries of the Members.

9. On October 15, 2010, the parties entered into the Settlement Agreement. The Settlement Agreement resolves the Disputes between the parties in a manner consistent with the public interest.

a. The HLP Service Area in which Heber Light & Power has agreed to be responsible to provide service, and the corresponding Rocky Mountain Power service area, are the result of difficult negotiations and balanced compromise between Rocky Mountain Power and Heber Light & Power to resolve their dispute regarding overlapping

service territories. The agreement of Rocky Mountain Power and Heber Light & Power to these service territories is an integrated package. Any modifications to the HLP Service Area and the corresponding Rocky Mountain Power service area would upset this difficult and carefully-crafted and interdependent compromise.

b. By eliminating overlapping service territories, the parties will be able to improve customer service for current customers, prevent duplication of services and facilities, limit the environmental impact of facilities, enhance public safety and community aesthetics and ensure that future customers can easily determine which company will provide service to them as growth occurs in Wasatch County.

c. The HLP Service Area includes many areas currently served by Heber Light & Power, including Daniel, an area known as Lake Creek and Timber Lakes currently served by Rocky Mountain Power using power supplied by Heber Light & Power under the Power Sale Agreement, areas known as Swiss Mountain Estates and Oak Haven currently served by Rocky Mountain Power and areas in which little or no service is currently provided by either party but that are adjacent to areas served or to be served by Heber Light & Power. Given Heber Light & Power's traditional service area, with the exception of the Lake Creek and Timber Lakes, Swiss Mountain and Oak Haven areas, Rocky Mountain Power has generally not installed facilities to provide service in the HLP Service Area and would be required to make substantial capital investments to provide service in those portions of the HLP Service Area. Rocky Mountain Power will not need to make these substantial capital investments if the Settlement Agreement is

approved and the Current Certificate is modified to remove the HLP Service Area. This will benefit all of Rocky Mountain Power's customers. Heber Power & Light has sufficient capacity to provide service to these customers.

d. The portions of Wasatch County excluded from the HLP Service Area are areas in which Rocky Mountain Power already provides service to customers or which are reasonable extensions of those locations given engineering and cost considerations, including terrain. Rocky Mountain Power's service territory includes the North Village, North Fields and Snake Creek areas, in which Heber Light & Power currently provides service. Rocky Mountain Power has pending requests for service from customers in those areas and, as noted above, extension of Rocky Mountain Power's facilities into those areas is reasonable.

e. Rocky Mountain Power will be transferring approximately 1,000 existing customers to Heber Light & Power, and Heber Light & Power will be transferring approximately 130 existing customers to Rocky Mountain Power. The potential for growth in new customers in the North Village area to be transferred to Rocky Mountain Power is substantial with two major developments planned in the North Village area.

f. Rocky Mountain Power's current residential rates have a substantially lower customer charge and an energy charge that on average is slightly higher than Heber Light & Power's. As a result and because many of the customers to be transferred from Rocky Mountain Power to Heber Light & Power occupy their homes only seasonally, the customers transferred from Rocky Mountain Power to Heber Light & Power will

experience an overall average increase in monthly charges of less than \$5.00 assuming past usage patterns continue in the future.

g. For purposes of the Application and conditioned on (1) the Commission issuing an Order approving this Application that becomes a Final Order, (2) the Final Order not being reversed on appeal in a manner that the parties are unable to address in a mutually satisfactory manner that the Commission approves, and (3) Rocky Mountain Power and Heber Light & Power completing the transfers contemplated in paragraph 4 of the Settlement Agreement and the Agreement for the Transfer of Distribution Facilities and Customers (Transfer Agreement) attached as Appendix 7 to the Settlement Agreement, Rocky Mountain Power and Heber Light & Power stipulate that it is in the public interest for the Commission to approve the Settlement Agreement and to amend the Current Certificate to exclude the HLP Service Area.

h. With regard to service to customers in the HLP Service Area outside the municipal boundaries of the Members, Heber Light & Power has agreed to comply with the conditions in section 11-13-204(7)(c) as follows:

(i) the rates and conditions of service for customers outside the municipal boundaries of the members shall be at least as favorable as the rates and conditions of service for similarly situated customers within the municipal boundaries of the members;

(ii) the energy services interlocal entity shall operate as a single entity providing service both inside and outside of the municipal boundaries of its members;

(iii) a general rebate, refund, or other payment made to customers located within the municipal boundaries of the members

shall also be provided to similarly situated customers located outside the municipal boundaries of its members;

(iv) a schedule of rates and conditions of service, or any change to the rates and conditions of service, shall be approved by the governing body of the energy services interlocal entity;

(v) before implementation of any rate increase, the governing body of the energy services interlocal entity shall first hold a public meeting to take public comment on the proposed increase, after providing at least 20 days and not more than 60 days' advance written notice to its customers on the ordinary billing and on the Utah Public Notice Website, created by Section 63F-1-701; and

(vi) the energy services interlocal entity shall file with the Public Service Commission its current schedule of rates and conditions of service.

i. Heber Light & Power's franchise agreements with Wasatch County, Daniel and Independence provide additional protections for customers in the HLP Service Area by providing a means for customers to bring complaints regarding service from Heber Light & Power to a neutral arbiter or ombudsman for resolution. *See* Utah Code Ann. § 11-13-204(7)(b)(i).

j. The Transfer Agreement provides reasonable terms and conditions for transfers of facilities between Heber Light & Power and Rocky Mountain Power and construction or installation of facilities by Heber Light & Power and Rocky Mountain Power necessary to provide service to the customers within their respective service areas. The Transfer Agreement also provides reasonable terms and conditions for transfers of customer service obligations in a manner designed to protect the interests of customers in continuous, safe and reliable service.

k. The Joint Ownership and Operation Agreement, attached to the Transfer Agreement as Appendix 7.12, provides reasonable terms and conditions for ownership and operation of certain transmission and distribution lines on which both Heber Light & Power and Rocky Mountain Power will have facilities that are necessary for them to provide service to their respective customers after completion of the transfers of customers contemplated by the Transfer Agreement. Joint use of certain facilities is an economic and efficient way to provide the service in the public interest and is consistent with prudent utility practices.

l. The Settlement Agreement provides flexibility for modifications to the HLP Service Area in the future if requested by customers should both Heber Light & Power and Rocky Mountain Power agree that modifications are in the interests of providing economical service to customers, the parties are able to receive any necessary amendments to their franchises and the Commission approves such modifications.

m. The Settlement Agreement resolves the Disputes between the parties regarding whether Rocky Mountain Power is obligated to pay impact fees to Heber Light & Power for power in excess of the amount provided in the Power Supply Agreement and whether Rocky Mountain Power's transmission and distribution line from Jordanelle Substation trespasses on Heber Light & Power property.

n. The Settlement Agreement provides additional consideration for the settlement including confidential agreements in which Rocky Mountain Power grants an option to Heber Light & Power and enters into an agreement regarding a study and in

which Heber Light & Power grants Rocky Mountain Power a right of first refusal. These agreements are integral components of the settlement package. They are reasonable and will not impair the ability of Rocky Mountain Power to provide service to its customers or have any significant effect on its rates and charges.

o. The Settlement Agreement avoids the necessity of further extensive and lengthy litigation between Heber Light & Power and Rocky Mountain Power. The Supreme Court decision in *Heber Light & Power* has determined only that the Commission does not have jurisdiction to resolve the dispute between the parties. The parties have not yet presented evidence and argument on the underlying basis of their dispute. Absent settlement, the parties would be required to engage in substantial additional litigation with the likelihood of further appeals to resolve their dispute. The outcome of such litigation is uncertain.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

1. SB 227 is directed at an energy services interlocal entity created before July 1, 2003, comprised solely of Utah municipalities, that has been providing retail electric service to customers outside the boundaries of its members for at least fifty years as of July 1, 2010. Utah Code Ann. § 11-13-204(7)(a). Heber Light & Power is such an entity.

2. SB 227 authorizes a qualifying energy services interlocal entity to continue providing service within a designated Area outside its members boundaries if it enters into a written agreement with the public utility certificated by the Commission to provide service in the

Area, in this case Rocky Mountain Power, for the energy services interlocal entity to be responsible to provide electric service in the Area. *Id.* § 11-13-204(7)(a)(i)(A). The Settlement Agreement is such an agreement.

3. SB 227 also requires that the energy services interlocal entity enter into a franchise agreement with the county and municipal governments with jurisdiction over the Area. *Id.* § 11-13-204(7)(a)(i)(B). The HLP Wasatch County Franchise, Daniel Franchise and Independence Franchise satisfy this requirement.

4. SB 227 requires that the Commission approve the agreement and delete the Area from the public utility's certificated area in order for the agreement to be effective. *Id.* § 11-13-204(7)(a)(ii).

5. SB 227 further provides that the Commission *shall* approve the agreement after public hearing if it determines that the agreement is in the public interest. *Id.* § 11-13-204(7)(b)(i). SB 227 provides the basis for the public interest determination. It states that:

The agreement is in the public interest in that it incorporates the customer protections described in Subsection (7)(c) and the franchise agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a neutral arbiter or ombudsman for resolving potential future complaints by customers of the energy services interlocal entity.

Id. § 11-13-204(7)(b)(i). Heber Light & Power has agreed in the Settlement Agreement to comply with the customer protections described in Subsection (7)(c) of the statute. The franchise agreements with Wasatch County, Daniel and Independence include these protections and a reasonable mechanism using a neutral ombudsman to resolve potential future complaints by customers in the Area regarding service from Heber Light & Power. Heber Light & Power's

franchise with Wasatch County, which was granted on May 21, 2008 and is currently in effect pending the Commission's approval of the Settlement Agreement, already includes the ombudsman mechanism.

6. Although the Commission is not required by the statute to consider the impact on customers of the service areas of the respective providers, the agreement between the parties regarding service areas will avoid wasteful duplication of facilities, limit the environmental impact of facilities, enhance public safety and community aesthetics, enable the parties to better plan to meet their future service obligations and provide customers with certainty regarding the provider authorized and obligated to provide service to them consistent with the state policy underlying SB 227. Generally, the immediate rate impact on customers will be minimal, and where there is a rate impact it results principally from the fact that Rocky Mountain Power has a substantially lower customer charge than Heber Light & Power and that many customers to be transferred occupy their homes only seasonally. In addition, the agreement regarding service areas will allow Rocky Mountain Power to avoid substantial capital investments that would be otherwise required to provide service in portions of Wasatch County in which it currently has no facilities to the benefit of all of its customers. Thus, customers' interest in efficient and economical service will be served by approval of the Settlement Agreement.

7. At the same time, the Settlement Agreement allows flexibility to modify the Area in the future should a customer request service from the provider that is not obligated to provide service. If a customer makes such a request, the requested provider is willing to provide service to the customer, the other provider agrees and any necessary amendments to franchises are

obtained, Rocky Mountain Power may seek Commission approval of the agreement and amendment of its certificated area. Any deviations from the service areas provided in the Settlement Agreement will require a request by a customer, the agreement of the providers, any necessary franchise modifications by the affected local governments and approval by the Commission. Thus, the circumstances that have led to the current dispute between Rocky Mountain Power and Heber Light & Power will not recur in the future.

8. SB 227 provides a means for Heber Light & Power and Rocky Mountain Power to settle their longstanding dispute with Commission approval. Absent the state policy expressed in the statute and Commission review and oversight, Rocky Mountain Power would not be able to enter into an agreement allowing another provider to provide service in the area in which it is obligated to serve. With the statute and the Commission's review and approval of the Settlement Agreement and its continuing regulation of Rocky Mountain Power, Rocky Mountain Power is able to enter into the Settlement Agreement. In addition, SB 227 clarifies Heber Light & Power's authority to provide service outside the municipal boundaries of its Member Cities but within the HLP Service Area without possibly subjecting itself to jurisdiction of the Commission.

9. The law favors the settlement of disputes. *See, e.g.* Utah Code Ann. § 54-7-1; *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613 (Utah 1983) ("*Wexpro II*"). "One reason public policy favors the settlement of disputes by compromise is that this avoids the delay and the public and private expense of litigation." *Wexpro II* at 613. The Disputes between Heber Light & Power and Rocky Mountain Power have been in place for

many years and have resulted in both parties expending significant time and resources in preparing and presenting proposals for service to customers that ultimately did not result in service. In addition, the parties have had difficulty planning for the future needs of customers when there was no certainty regarding the areas in which they would serve. Finally, the parties have been involved in litigation in an attempt to resolve their Disputes for over three years involving a significant commitment of resources. Approval of the Settlement Agreement will resolve their Disputes. If the Settlement Agreement is not approved, the parties will be required to engage in extensive and costly litigation to resolve their Disputes. They will be required to develop and present evidence and legal argument on their underlying service territory dispute. There will likely be further appeals of any decision of the district court, and the outcome of the litigation is uncertain.

10. Based on the foregoing, the Commission concludes that approval of the Settlement Agreement and amendment of the Certificate to exclude the HLP Service Area is in the public interest.

11. The Commission agrees with the parties that this Order should be vacated upon notice and proof by Rocky Mountain Power or Heber Light & Power establishing that: (a) the Order has not become a Final Order, (b) the Final Order is reversed or modified on appeal in a manner that cannot be resolved to the satisfaction of either Rocky Mountain Power or Heber Light & Power and approved by the Commission, or (c) Rocky Mountain Power or Heber Light & Power fails to complete the transfers of facilities and customers in accordance with the Transfer Agreement. In the event the foregoing conditions are not satisfied, the Order should be

vacated to preserve the ability of the parties to litigate and resolve their Disputes based on the circumstances as they exist prior to implementation of the Settlement Agreement.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Commission makes and enters the following order:

1. The Application is granted.
2. The Settlement Agreement is approved and shall be implemented in compliance with its terms.
3. The Certificate is amended to exclude from Rocky Mountain Power's service territory in Wasatch County the HLP Service Area.
4. This Order shall be vacated upon notice and proof by Rocky Mountain Power or Heber Light & Power establishing that: (a) the Order has not become a Final Order, (b) the Final Order is reversed or modified on appeal in a manner that cannot be resolved to the satisfaction of either Rocky Mountain Power or Heber Light & Power and approved by the Commission, or (c) Rocky Mountain Power or Heber Light & Power fails to complete the transfers of facilities and customers in accordance with the Transfer Agreement.
5. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final

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agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 9th day of March, 2011.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 9th day of March, 2011, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#71405