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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 | Docket No. 10-035-124  |
|  | <b>UTAH OFFICE OF CONSUMER SERVICES' MEMORANDUM IN SUPPORT OF UAE MOTION TO COMPEL</b> |

In this docket, the issue presented by UAE's motion to compel concerns Rocky Mountain Power's compliance with the following Commission administrative rule:

Utah Admin. Code R 746-100-16 A. 1. e. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Sensitive Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requested Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Sensitive Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for: the claim, the need for the specific, additional protective

measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

In response to UAE's requests for information about specific components of Rocky Mountain Power's general rate case, Rocky Mountain refuses the requests claiming that UAE may not even ask. Rocky Mountain does not even pretend to comply with this rule.

In the proceeding that adopted this rule, the Office noted its experience that utilities unilaterally assert that information is highly sensitive and allow only supervised inspection of materials, or require that the Office accept an oral summary, prohibiting copying, note taking, or any type of information summaries, analysis or extraction. The Office noted that this action is taken without benefit of a motion to the Commission as was required by the standard protective order then in use.<sup>1</sup> The Office noted that the assertion is habitually unsupported by an explanation of the additional harm that will result from classifying the information

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<sup>1</sup> "The provider of the requested information shall also petition the Commission for an order granting additional protective measures which the petitioner believes are warranted for the claimed highly sensitive documents and information that is to be produced in response to an information request. The provider shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection." The current rule also requires the providing party to first consult with the requesting party before petitioning for additional protective measures. The Office's experience is that Rocky Mountain Power does not first consult with the Office as the requesting party. The company unilaterally restricts access.

as provided in the protective order. *Utah Office of Consumer Services' Comments, September 15, 2009, Docket No. 09-999-08.*

UAE's motion to compel is required by another example, albeit an extreme one, of Rocky Mountain Power's practice to withhold what is otherwise discoverable outside of and in disregard of the Commission rule; disregarding its obligation to try to reach agreement and to petition the Commission if an agreement is not reached.

The Commission has on more than one occasion, plainly defined the obligation of Rocky Mountain Power to provide to the Commission and parties a full disclosure of relevant facts necessary for fairness and procedural due process.

As we have stated on numerous occasions, a utility has "unequaled access to the financial and accounting information" relating to its operations. It also is the sole source for access to or knowledge concerning its business plans, past, present and future. *E.g.*, Order Approving Test Year Stipulation, issued October 20, 2004, Docket No. 04-035-42, page 5. With the utility as the information gatekeeper, the Commission and all others participating in any regulatory activities and proceedings involved with utility regulation know only what the utility tells us concerning its plans, activities and operational information. *E.g.*, Report and Order, issued January 3, 2008, In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization, Docket No. 06-035-163. There is concern about informational parity arising from the utility's control of access to, the flow of, the type of and the adequacy of the information made available to those outside of the utility. These include concerns about informational access affecting the balancing of inherent conflicts of interests between the utility and others, as the utility pursues what it believes is in its best interests and duties to its owners and other parties' need for information as they pursue what they believe is in their best interests and fulfill their responsibilities and duties. In this vein, the Utah Supreme Court has stated:

In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence, and the mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the burden. Ratemaking is not an adversary proceeding in which the applicant needs only to present a prima facie case to be entitled to relief. A state regulatory commission, whose powers have been invoked to fix a reasonable rate, is entitled to know and before it can act advisedly must be informed of all relevant facts. Otherwise, the hands of the regulatory body could be tied in such fashion it could not effectively determine whether a proposed rate was justified. *Utah Department of Business Regulation v. Utah Public Service Commission*, 614 P.2d 1242, 1245, 1246 (Utah 1980)(Wage Case).

*Order on Motions to Dismiss, September 23, 2008, In the Matter of Rocky Mountain Power for Authority to Increase its Retail Rates, Docket No. 08-035-38, page 13-14.*

Time and time again, the Utah Supreme Court has reaffirmed its reliance upon Commission expertise, affirmed that the utility bears a heavy burden of proof, and has defined the nature and quality of the evidence that the Commission must have to determine if a rate is just and reasonable. The Court has affirmed that ratemaking proceedings are not conducted on the basis of gamesmanship or by undermining the Commission's proceedings in a manner inconsistent with a utility's duty to be forthright and candid.

A straightforward application of these principles to UAE's initial data request and now its motion to compel results in an order that protects information reasonably claimed in good faith to require confidential treatment but which is narrowly so classified and in no uncertain terms requires Rocky Mountain Power to supply the information. Information pertaining to the "contested projects" is relevant to Rocky Mountain Power's general and specific rate increase requests in this docket. UAE and other interveners will question the timing and prudence of the "contested projects". See *Sierra Club Petition to Intervene, March 25, 2011*.<sup>2</sup>

The utility is truly the gatekeeper to information concerning what has happened, what is happening and what the utility anticipates can happen as its management continues pursuit of its business plans. *In the Matter of Rocky Mountain Power Accounting Order Applications, Report and Order, January 3, 2008, Docket Nos. 06-035-163, 07-035-04, 07-035-14*. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The information that UAE requests and in which all parties are

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<sup>2</sup> "For example, according to the company's pre-filed testimony, pollution control equipment on its coal-fired power plants to reduce emissions that cause regional haze in national parks and wilderness areas constitutes 60% of the rate increase, or approximately \$430 million fleet-wide. (See, e.g., Teply testimony at p. 2.) Importantly, these capital investments may have been premature, calling into question whether such expenditures were prudent in the first place and in the best interest of ratepayers." *Sierra Club Petition, page 3*. "Treating very expensive retrofit work in a piecemeal fashion is an imprudent and inefficient use of ratepayer money. Moreover, such an approach allows the company to impermissibly preclude full analysis of anticipated costs as compared to other, potentially less expensive, options such as alternative energy sources, fuel switching or retirement." *Sierra Club Petition, page 4*.

interested, is precisely the type of information that the Utah Supreme Court recognizes as information a state regulatory commission **is entitled to know**. *Utah Department of Business Regulation v. Utah Public Service Commission*, 614 P.2d. at 1246. Accordingly, the Office joins in UAE's requests and motion.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of April 2010.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above Memorandum in Support of UAE Motion to Compel was served upon the following by electronic mail sent on April 12, 2011:

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