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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. 10-035-124

**REPLY IN SUPPORT OF UIEC'S  
MOTION TO COMPEL DATA  
RESPONSES**

UIEC submits this Reply in Support of its Motion to Compel Data Responses requesting the Utah Public Service Commission (“Commission”) issue an order compelling Rocky Mountain Power (“RMP” or the “Company”) to respond fully and accurately to UIEC Data Requests 10.3, 19.2, 19.9, 19.11, 20.5, 20.9 through and including 20.27, 20.30, 20.31. Because direct testimony on these issues had to be filed before this issue could be resolved, UIEC requests that the Commission prohibit RMP from contesting any information UIEC has presented on the hedging strategies, policies and practices of the Company’s affiliates, and that it be deemed admitted. This is just another example of the Company’s continual efforts to obfuscate and dissemble the facts. As recently noted by the testimony of Mr. Mark W. Crisp on behalf of the Division of Public Utilities (“DPU”): “The current risk mitigation plan of the

Company does not provide any incentive for the Company to provide an accurate or defensible natural gas hedging program. . . . [and] it is realistically impossible for the Commission or DPU to monitor the hedging program during the execution phase of the contracts and swaps.” D. Test. Crisp 14:225-26, 237-39.

**UIEC’S MOTION TO COMPEL WAS NOT UNTIMELY.**

1. The Company suggests that UIEC should have filed its Motion to Compel as soon as its request was denied, and that the Motion was thus untimely. RMP Br. at 2, 10-11. However, contrary to RMP’s assertion, UIEC’s Motion to Compel was not untimely. Under Utah law and pursuant to the Utah Rules of Civil Procedure, which have been adopted by the Commission in situations for which there are no provisions under the Commission’s rules, there is no deadline on filing a motion to compel. Moreover, UIEC was obligated to attempt to resolve its discovery issues with the Company prior to resorting to the Commission for relief. *See, e.g.*, Utah R. Civ. P. 37(a). Accordingly, as set forth in Exhibit F of its Motion to Compel, UIEC attempted several times to obtain the requested information. In addition, because it is common for the Company to object to a data request, and then provide the information if the data request is consequently submitted but asked a different way, UIEC attempted to acquire the information by rewording the requests and resubmitting in its Data Request Sets 19 and 20. As the evidence shows, UIEC continued in its good faith attempts to meet and confer up through May 3. UIEC filed its Motion to Compel on May 11. Thus, its Motion was not untimely.

2. UIEC agrees that once it was able to review the supplemental information, UIEC accepted as adequate the belated response to UIEC Data Request 12.9. This belated response was produced subsequent to UIEC’s Motion to Compel and during a meet and confer conference

between UIEC and RMP on the afternoon of May 16, 2011—four (4) weeks and five (5) days after the response was originally due and ten (10) days before direct testimony was due. Nevertheless, in contrast to the Company’s suggestion that all good faith attempts to meet and confer lead to an untimely motion to compel, this demonstrates that a good faith attempt can resolve the issue.

**RMP’S OBJECTION HAS BEEN WAIVED AND IS NEVERTHELESS INAPPLICABLE, AND THUS, UIEC’S MOTION IS NOT MOOT.**

3. Under the Commission’s rules, “Informational queries termed ‘data requests’ which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure.” Utah Admin. Code R746-100-8.A.

4. RMP objects, for the first time in its opposition brief, that it does not have possession, custody or control over the hedging information requested by UIEC, and cites Rule 34(a)(1) of the Utah Rules of Civil Procedure. RMP Br. at 6. However, this rule—regarding production of documents and things—is not applicable in this case. The majority of UIEC’s requests were interrogatory in nature, not requests for production of documents and things. *See, e.g.,* Exhibits A, B, C, D, E to UIEC’s Motion to Compel (UIEC Data Request Nos. 10.3, 19.2, 19.9, 19.11, 20.10, 20.11, 20.12, 20.13, 20.14, 20.15, 20.17, 20.18, 20.19, 20.20, 20.21, 20.22, 20.23, 20.24, 20.25, 20.26, 20.27, 20.30, and 20.31 ask for explanations and descriptions, not for the production of documents). RMP’s objection, therefore, is irrelevant because it does not relate to interrogatories.

5. Furthermore, RMP failed to object in any of its data responses on the grounds that it did not have possession of the information requested. *See id.* “All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived.” Utah R. Civ. P. 33(b)(4). Thus, RMP has waived this objection and it should be disregarded.

6. Pursuant to the Utah Rules of Civil Procedure, if the party served is a public or private corporation, the interrogatories are to be answered “by *any officer* or agent, who shall furnish such information as is available to the party.” *Id.* at 33(a) (emphasis added). Therefore, any officer of PacifiCorp was required to furnish such information as was available.

7. Based on the PacifiCorp 10-K dated December 31, 2010, Mr. Gregory E. Abel is Chairman of the Board and Chief Executive Officer of PacifiCorp.

8. Based on the MidAmerican Energy Company 10-K dated December 31, 2010, Mr. Gregory E. Abel is the President of MidAmerican Funding, which conducts no business other than activities related to its ownership of MidAmerican Energy Company.<sup>1</sup>

9. Based on the PacifiCorp Affiliated Interest Report for 2010, five (5) executive, management and professional employees transferred from MidAmerican Energy Company to PacifiCorp during 2010. This demonstrates that information about MidAmerican Energy Company has been transferred to and is known by PacifiCorp.

10. A review by UIEC’s expert, Dr. J. Robert Malko, of the RMP-claimed highly confidential hedging information the Company did produce demonstrated that PacifiCorp has

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<sup>1</sup> The 10-K states that MidAmerican Funding conducts no business other than activities related to its debt securities and the ownership of MHC, but MHC conducts no business other than the ownership of, among others, 100% of MidAmerican Energy. MidAmerican Energy accounts for the predominant part of MidAmerican Funding’s and MHC’s assets, revenue and earnings. 10-K Part 1, Item 1 (Dec. 31, 2010).

noted in the past that it should confer with MidAmerican Energy Company on that company's hedging strategies and practices. See Confidential Minutes of PacifiCorp Energy Risk Oversight Committee, June 6, 2006, July 7, 2007.

11. Any information that Mr. Abel, or any other officer of PacifiCorp, has about MidAmerican Energy Company's hedging practices is by definition information that is also in PacifiCorp's possession. Thus, PacifiCorp likely had possession of the information but failed to cooperate in the discovery process.

12. In attempting to meet and confer, UIEC requested several times that the Company obtain the requested information from any officer, which it is required to do under the Utah Rules of Civil Procedure.

13. Because the Company had failed to respond and had delayed for so long, UIEC contacted the Iowa Utilities Board and made the same inquiries regarding MidAmerican Energy Company's natural gas hedging practices. The Iowa Utilities Board provided the requested information. However, this is a secondary source and UIEC is left to rely on hearsay evidence. The Company could have obtained this information from its own officers and provided a written response to UIEC's interrogatories. RMP was obligated to do so. Instead, RMP has deliberately refused to cooperate in discovery.

14. As a result of the position UIEC has been placed due to RMP's failure to cooperate in discovery, RMP should be prohibited from challenging UIEC's information regarding the hedging of its affiliates, including MidAmerican Energy Company.

15. Under Utah law, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Utah R. Civ.

P. 26(b)(1). Whatever helps to attain a determination of the dispute between parties is relevant. *Ellis v. Gilbert*, 429 P.2d 39, 40 (Utah 1967).

16. UIEC's requests regarding the hedging practices of RMP's affiliates are relevant because they go to what RMP reasonably should have known with respect to hedging strategies, which is directly relevant to the issue of the prudence of RMP's natural gas hedging practices.

### CONCLUSION

17. The issues raised in this Motion to Compel are significant, substantive, and critical to a proper determination of just and reasonable rates in this case. RMP's refusal to cooperate in the discovery process has prejudiced UIEC's ability to evaluate and prepare testimony on this issue. Therefore, UIEC respectfully requests that this Motion to Compel be granted. Also, in light of the second-hand testimony on which UIEC was forced to rely, UIEC respectfully requests the Company not only be compelled to provide written responsive answers, but that it be prohibited from challenging UIEC's information regarding the hedging of its affiliates, and that it be deemed admitted.

DATED this 6th day of June, 2011.

/s/ Vicki M. Baldwin

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**CERTIFICATE OF SERVICE**

(Docket No. 10-035-124)

I hereby certify that on this 6th day of June 2011, I caused to be emailed, a true and correct copy of the foregoing **REPLY IN SUPPORT OF UIEC'S MOTION TO COMPEL DATA RESPONSES** to:

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