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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

REDACTED

MOTION TO COMPEL OF THE DIVISION OF PUBLIC UTILITIES FOR AN ORDER REQUIRING ROCKY MOUNTAIN POWER TO RESPOND TO DATA REQUESTS, REQUEST FOR PERMISSION TO USE RESPONSE IN EITHER SURREBUTTAL TESTIMONY OR IN SUMMARY STATEMENT AT HEARING, AND REQUEST FOR EXPEDITED CONSIDERATION

Pursuant to R746-100-3H, the Division of Public Utilities (Division) files this motion and two related requests in Docket No. 10-035-124. The Division moves the Public Service Commission (Commission) for an order compelling Rocky Mountain Power (Company) to answer DPU Data Request 46.7 and DPU Data Request 46.8 fully and accurately, and in accordance with applicable Commission rules. Should its motion be granted, the Division also requests the Commission's permission to use the Company's compelled response to the data request in either the Division's surrebuttal testimony or in its summary statement at hearing, depending upon when the Division receives the full and accurate response. Finally, the Division requests expedited consideration, and hearing if necessary, of its motion and requests.

BACKGROUND

1. On April 20, 2011, the Commission issued its decision in Docket No. 10-035-126 in what is commonly called the Lakeside II docket, inter alia approving the decision to acquire the Lakeside II resource.

2. On May 9, 2011, the DPU sent Data Request Set DPU 38 to the Company; requests numbered 38.4 and 38.5 asked for new modeling runs.

3. On May 19, the Division and the Company participated in a conference call to discuss the Company's questions and concerns regarding data requests DPU 38.4 and DPU 38.5.

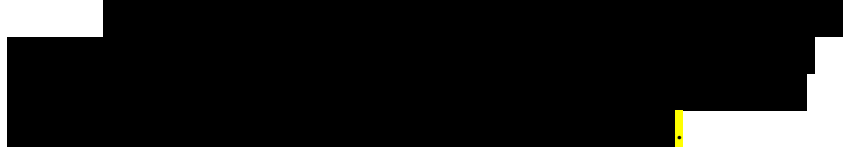
4. On May 26, 2011, DPU witnesses Mr. Charles Peterson and Mr. Richard Hahn filed direct testimony in Docket No. 10-035-124.

5. On June 2, 2011, via its response received that day by the DPU, the Company declined [REDACTED]

See Data Responses to DPU Data Requests 38.4 and 38.5, attached as Exhibit 1.

6. On June 8, 2011, as a result of the Company's non-answers to Data Request 38.4 and 38.5, the Division sent Data Request Set DPU 48 to the Company. DPU DR 46.7 and 46.8 are as follows:

[REDACTED]



7. On June 28, 2011, the Company’s response to DPU 46 was received late in the afternoon.¹ The Company refused to provide the analyses requested in Data Requests 46.7 and 46.8. With regard to Data Request 46.7, the Company responded claiming the request was “beyond the proper scope of discovery and unduly burdensome; “not realistic;” “does not comply with the Commission’s order on economic modeling;” is “untimely;” and “does not seek information that information that could be utilized in surrebuttal testimony and is not likely to lead to discovery of admissible evidence.”² In responding to Data Request 46.8, the Company directed the Division to the Company’s answer to Data Request 46.

8. Prior to filing this Motion to Compel, the Division attempted to resolve the issue with the Company, but no resolution was reached and, on July 5, 2011, the Company again refused to provide the requested responses.

ARGUMENT

More than ample support exists for the Commission to grant the Division’s request for an order to compel. The Company’s refusal to answer properly is not supportable when the facts in this case are analyzed in conjunction with applicable rules and the Commission’s responsibilities.

In a very recent order, the Commission addressed a discovery dispute between the Company and another party in this docket. On June 28, 2011, the Commission issued an order compelling the Company to make certain information available responsive to UIEC’s request. In this recent order, the Commission provided guidance regarding the scope of discovery, stating:

¹ The Company’s response was nearly a week overdue.
² See Company Response to Data Request DPU 46.7.

In general, parties to Commission proceedings may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. In examining the scope of relevant matters in this case, we are guided by Utah Code Ann. § 54-4-4(4)(a), which applies whenever, in the determination of just, reasonable, or sufficient rates, the Commission considers the prudence of a utility’s actions or the expenses it incurs. In such cases, the statute directs the Commission to apply the following standards in making its prudence determination:

- (i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;
- (ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;
- (iii) determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and
- (iv) apply other factors determined by the commission to be relevant, consistent with the standards specified in this section.³

The Commission’s rules explicitly address discovery and direct parties to Rules 26-37 of the Utah Rules of Civil Procedure (URCP).⁴ URCP Rule 26(b) states:

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(b)(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Beyond the Commission’s rules, the Division has independent statutory authority to conduct

³ See Order to Compel at pp. 3-4. Internal citations omitted.

⁴ See R746-100-8.

investigations and studies, including requiring the provision of data and other information by a regulated entity.⁵ The Company's objections are unsustainable when considered in light of the facts and governing statutes and regulations pertinent to this case. The Company's objections are addressed below seriatim.

The Company should not be allowed to prevail on its assertion that running a study is burdensome when the Company has sole possession of the model and information necessary to run the study. Because the Division does not have access to or possession of the model, there is no possibility that the Division could run the requested study itself. Furthermore, although the Division has a high level understanding of the inputs that are used, the Division does not know how the inputs are framed by the Company when it inputs them into its proprietary model.

The Company's claim that the study is not realistic does not provide supportable grounds for an objection. This requested study satisfies the criteria of a data request that must be answered. The applicable standards are that the question must be relevant, with relevance being assessed in light of the Commission's responsibilities; and that the question requests material that "appears reasonably calculated to lead to the discovery of admissible evidence." Admissibility of the actual information sought is not required. DPU Data Requests 46.7 and 46.8 meets applicable criteria as it pertains to the Company's decision making process concerning [REDACTED] the Apex project. The Company's [REDACTED] [REDACTED] directly affect the Commission's determination of just and reasonable rates. Indeed, the Commission's Lakeside II order recognized the relationship between the Company's decision [REDACTED] that decision's affect upon just and reasonable rates; specifically that order contained the Commission's direction to pursue the Apex

⁵ See Utah Code Ann. Sec. 54-4a-1.

issues in a ratemaking docket. Consistent with the Commission's instructions to pursue these issues in a ratemaking docket, the Division has requested an adjustment in this [REDACTED]

The Commission's statement that it would give no weight to an economic modeling statement is not the equivalent of a determination that such a study is not relevant and is not reasonably calculated to lead to admissible evidence. The requested study will provide information that is needed in evaluating the Company's decision-making process; for the reasons stated above concerning the relationship between ratemaking issues and the Company's decision regarding [REDACTED] Apex, information concerning the Company's decision-making process clearly satisfies the criteria for discovery that must be answered, and it is reasonably calculated that the response will lead to admissible evidence.

Lastly, the Company's claim that DPU Data Request is untimely is meritless. The Division asked the Company for this sort of information in data request dated May 9, 2011. The Division received a response to the May 9, data request on June 2nd. The Company's nonresponsive answers on June 2, 2011 led to the Division making yet another request for the basically the same information on June 8th. This motion is filed in response to the pattern of the Company's nonresponse answers. The Division has been disadvantaged by the Company's refusal to provide the requested information because of the dependence between the Division's [REDACTED] and the appropriate revenue requirement to develop just and reasonable rates.

Additionally, there is no requirement that information from a certain data request be included in a particular round of testimony. The Company's claim that it is entitled to withhold information based upon the due date of rebuttal testimony is unsupported. The criteria for discoverable material are not tied to a pre-filing testimony date. Information gained can lead to

admissible evidence through the hearing such as through cross-examination.

Because the Company has delayed in answering DPU Data Requests 46.7 and 46.8, the Division requests permission to use the information, when finally submitted, in its surrebuttal testimony, and, if the information is provided too late to be incorporated into surrebuttal testimony, the Division requests permission to include it in the Division's summary statement at the hearing. The Company cannot claim surprise or that it was disadvantaged because the Company had the means – the model and the information -- to answer all along, and the Company itself is providing the information and the model run.

Because of the upcoming testimony filing deadlines and the revenue requirement hearing, the Division respectfully requests expedited consideration of its motion and requests.

For the preceding reasons, the Division requests that the Commission issue an order compelling the Company to answer fully and accurately DPU Data Requests 46.7 and 46.8. The Division also requests permission to use these responses in its testimony or summary, as specified in more detail above. Finally, the Division requests expedited consideration of its motion and related requests.

Respectfully submitted this ___ day of _____, 2011.

Patricia E. Schmid
Attorney for the Division of Public Utilities

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July 2011, I caused to be e-mailed, a true and correct copy of the foregoing REDACTED MOTION TO COMPEL OF THE DIVISION OF PUBLIC UTILITIES FOR AN ORDER REQUIRING ROCKY MOUNTAIN POWER TO RESPOND TO DATA REQUESTS, REQUEST FOR PERMISSION TO USE RESPONSE IN EITHER SURREBUTTAL TESTIMONY OR IN SUMMARY STATEMENT AT HEARING, AND REQUEST FOR EXPEDITED CONSIDERATION to:

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REDACTED

EXHIBIT 1

CONFIDENTIAL – NOT ATTACHED