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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 UAE’S REPLY IN SUPPORT OF REQUEST FOR TEST PERIOD HEARING
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The UAE Intervention Group (“UAE”), files this reply in support of its request for an early test period hearing and in reply to the Response of Rocky Mountain Power in Opposition to UIEC’s Motion and UAE’s Request filed on February 15, 2011 (“RMP Response”).

I. *Introduction*

In a transparent attempt to force the Commission to accept its extreme test period – an effort at which it has never succeeded on the merits, despite several attempts – RMP has launched a two-pronged attack: (1) resisting an early evidentiary hearing for a determination of the appropriate test period, and (2) refusing to respond to data requests seeking revenue

requirement impacts of an alternative test period. This attack cannot succeed. It is the Commission, and not RMP, with a statutory obligation to determine the appropriate test period based on competent evidence and to ensure just and reasonable rates.

Relying upon an unreasonable and unsupportable interpretation of recent changes to statutes and rules, RMP contends that the Commission has no option but to accept its extreme test period, ending June 2012, or a test period ending June 2011. To the contrary, Utah law requires the Commission to choose the appropriate test period based on competent evidence from among various reasonable alternatives. UAE is prepared to demonstrate at a test period hearing that a calendar year 2011 test period is not only a reasonable alternative, but also the alternative most consistent with past Commission Orders and best representative of the rate effective period. However, the parties and the Commission will lose any ability to evaluate or select any such test period unless a test period hearing is scheduled in the near future and/or RMP is required to respond to data requests necessary for an evaluation of RMP's application under a 2011 test period.

II. *The RMP Response Grossly Misinterprets Utah Statutes and Rules.*

Perhaps the most troubling aspect of the RMP Response is in its claim that changes in Utah statutes and Commission rules have already narrowed the available test periods to just two – the extreme test period selected by the utility or the alternative period required by Commission Rule R746-700-22 (“Complete Filing Rule”). RMP's untenable position relies upon a serious misreading of recent statutory changes to Utah Code § 54-7-12 which were designed to specify when and under what circumstances the 240-day deadline to complete the revenue requirement aspect of a general rate case will start, stop and re-start (the “240-day Clarification), and the

Complete Filing Rule. Neither the 240-day Clarification nor the Complete Filing Rule purports to or does in any manner alter the Commission's statutory obligation under Utah Code § 54-4-4 (3) to make an evidentiary determination as to the appropriate test period, or RMP's obligation to respond to relevant data requests.

RMP's extreme and untenable interpretation of the Commission's Complete Filing Rule would render that Rule unlawful, in that it would conflict with the express requirements of the test period statute, Utah Code § 54-4-4(3). The 240-day Clarification does not, and the Complete Filing Rule can not, change the Commission's statutory obligation under Utah Code § 54-4-4(3) to determine the most appropriate test period based on competent evidence. Nor does either excuse the utility from responding to relevant data requests. Indeed, given the new limitations on how and when the 240-day window can be suspended or restarted, the 240-day Clarification makes it all the more critical that a test period determination be made very early in the general rate case process and that RMP respond fully and timely to data requests aimed at determining revenue requirement under an alternative test period.

III. *UAE is Entitled to a Hearing to Demonstrate that a Calendar Year 2011 Test Period is Appropriate.*

The RMP Response includes factual arguments as to why RMP believes that its extreme test period is appropriate. Those factual arguments are not relevant to UAE's request and can only be resolved in an evidentiary test period hearing. While UAE strongly disagrees with RMP's factual claims, it will not include its factual responses in this legal memorandum. Utah Code 54-4-4 requires the Commission to make a test period determination based on competent evidence. Only through an early test period hearing can the Commission receive competent

evidence in a manner and time that will permit it to discharge its statutory obligation to select the appropriate test period.

IV. *UAE is Entitled to Discover Revenue Requirement Impacts of a 2011 Test Period.*

RMP argues that UAE's "discovery issue" is premature and suggests, disingenuously, that it will "comply with its obligations under the Commission's rules and the Utah Rules of Civil Procedure." (RMP Response at 15). In fact, RMP refuses to provide data known only to RMP that is necessary to evaluate revenue requirement issues under a calendar year 2011 test period.

Similarly, RMP claims that it "anticipates that the parties will be able to satisfactorily resolve any discovery issue," and that any disagreement can be brought to the Commission for future resolution. Given its blanket refusal to provide critical revenue requirement information for a 2011 test period, this claim is disingenuous. It is part of RMP's attempt to manipulate the 240-day statutory deadline and discovery disputes to force the Commission and the parties to accept its extreme test period.

No party other than RMP is in a position to determine all necessary cost and revenue impacts of a 2011 test period. By simultaneously resisting an early hearing to choose the appropriate test period and also objecting to data requests seeking critical information for a different test period, RMP hopes to delay to the point that its extreme test period is the only test period that can practicably be analyzed in this docket, given the 240-day deadline. RMP should not be allowed to game the system in this manner.

IV. *Conclusion.*

The parties can meaningfully dispute the utility's extreme proposed test period and the Commission can meaningfully discharge its statutory obligation to select the best test period on the basis of competent evidence only if an early evidentiary test period hearing is held and/or RMP is required to respond fully and completely to data requests for meaningful revenue requirement adjustments based on alternative test periods. RMP's attempt to prevent meaningful test period options should be soundly rejected as inconsistent with applicable statutes and rules and inconsistent with the public interest.

DATED this 16th day of February, 2011.

HATCH, JAMES & DODGE

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 16th day of February, 2011, on the following:

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