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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of the Utah Association of Energy Users for a Deferred Accounting Order Directing Rocky Mountain Power to Defer Incremental REC Revenue for Later Ratemaking Treatment

**Docket No. 10-035-\_\_**

**APPLICATION FOR DEFERRED  
ACCOUNTING ORDER FOR  
INCREMENTAL REC REVENUE**

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Pursuant to Utah Code Ann. §§ 54-4-1 and §54-4-23, the Utah Association of Energy Users (“UAE”) files this Application for Deferred Accounting Order for Incremental REC Revenue (“Application”) to request an order from the Utah Public Service Commission (“Commission”) requiring Rocky Mountain Power (“RMP”) to defer for later ratemaking treatment all revenues recovered by RMP in connection with sales of Renewable Energy Credits (“RECs”), both in the form of unbundled RECs and the REC component of renewable energy products bundled with RECs, in excess of the REC value utilized in Utah rates, commencing on the date of this Application and ending upon the date that new rates take effect in connection

with a future ratemaking proceeding.

In support of this Application, UAE alleges and represents as follows:

**Factual Background**

1. Rocky Mountain Power is a division of PacifiCorp doing business in Utah and is a public utility subject to the jurisdiction of this Commission.

2. UAE is an organization comprised principally of large Utah electric consumers who are customers of RMP.

3. On information and belief, the market value available to RMP in selling renewable attributes of renewable energy resources, both unbundled RECs and the REC component of renewable energy sales, has recently increased, and is continuing to increase, in a manner that is dramatic, unprecedented, unforeseeable and extraordinary.

4. On information and belief, the extraordinary increase in the value of RECs is due, at least in material part, to recent and anticipated future orders of various regulatory authorities, including from the State of California.

5. On information and belief, RMP has recently entered into contracts, and will in the foreseeable future enter into other contracts, for the sale of bundled and unbundled RECs at prices significantly higher than prices projected or disclosed by RMP in the pending rate case, Docket 09-035-23.

6. RMP did not incorporate into its rate case projections or disclose to the Commission in the pending general rate case the extraordinary increase in the value of RECs.

7. RECs are sold by RMP in connection with its renewable energy resources such as wind, geothermal, and small hydro; Utah's allocated cost of these renewable energy resources is

fully recovered in the rates charged to Utah retail customers. Consequently, the full value of REC sales revenue apportioned to Utah should be credited to Utah customers as an offset against retail rates.

8. On information and belief, RMP will receive significant incremental revenue from selling bundled and unbundled RECs over and above the value reflected in Utah rates (the “Incremental REC Revenue”), Utah’s annual share of which is estimated to be in the tens of millions of dollars.

9. In its rebuttal filing in the pending rate case, RMP adopted projected total company REC values of \$18.5 million for the 12-month period ending June 30, 2010. The Commission’s Report and Order in that docket, dated February 18, 2010, utilized that value in setting Utah rates.

10. Recent testimony filed in Wyoming estimates that RMP total company REC values will be in the range of \$84.4 million to \$95.2 million for calendar year 2010, several times the value incorporated in the Utah rates set by the Commission in its Report and Order dated February 18, 2010.<sup>1</sup>

### **Legal Principles**

11. The rule against retroactive ratemaking generally precludes the ratemaking process from being influenced by actual revenues that deviate from rate case estimates due to “missteps made in the ratemaking process,” *Utah Department of Business Regulation v. Utah Public Service Commission*, 720 P.2d 420 (Utah 1986). However, exceptions to this rule are

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<sup>1</sup> Wyoming Docket No. 20000-353-ER-09. Prefiled direct testimony of Denise Kay Parrish on behalf of the Office of Consumer Advocate; Also, prefiled direct testimony of Kevin C. Higgins on behalf of Wyoming Industrial Energy

recognized in Utah for, among other things, unforeseeable and extraordinary changes in revenue. *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765, 771-772 (Utah 1992); Report and Order, Utah PSC Dockets 06-035-163, 07-035-04, 07-035-14, at 15 (January 3, 2008). The dramatic increase in Incremental REC Revenue satisfies this exception, in that it was unforeseeable and is extraordinary.

12. Another recognized exception to the general rule against retroactive ratemaking is for events or circumstances that may be known but not measurable at the time of a rate case, e.g., an event which may have been known or foreseeable, but whose impact upon the revenues of the utility were unforeseeable and extraordinary, or whose actual manifestations vary from their projections in an unforeseeable and extraordinary way. Report and Order, Utah PSC Dockets 06-035-163, 07-035-04, 07-035-14, at 19 (January 3, 2008). The Incremental REC Revenue satisfies this exception, in that it was unforeseeable and extraordinary, or the manifestation of the same will vary from the projections in an unforeseeable and extraordinary way.

13. Another exception recognized in Utah to the general rule against retroactive ratemaking is for utility misconduct that undermines the integrity of the ratemaking process. *Stewart v. Utah Public Service Commission*, 885 P.2d 759, 779 (Utah 1994). UAE is currently unaware of when or the extent to which the extraordinary increase in projected Incremental REC Revenue was known by RMP. To the extent such information was known and concealed during the pending general rate case, this exception may be satisfied.

14. The Commission has the authority to prescribe the accounts and accounting

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Consumers.

practices for Utah public utilities, including RMP.

15. In order to ensure just and reasonable rates for Utah ratepayers of RMP, UAE submits that a deferred accounting order should be issued to require RMP to defer for future ratemaking treatment all Incremental REC Revenue from the date of this Application to the effective date of new rates in a future RMP proceeding.

16. In requesting this deferred accounting order, UAE is not requesting any final ratemaking determination as to the amount or ratemaking treatment of Incremental REC Revenue, but rather an accounting order to ensure that the Incremental REC Revenue can be properly and fully considered and dealt with in a future ratemaking proceeding.

17. RMP's recent applications for a deferred accounting order for net power costs in Docket 09-035-15 and for single-item ratemaking treatment in Docket 10-035-13 further demonstrate that deferred accounting treatment for Incremental REC Revenue is just and reasonable and in the public interest.

### **Notices**

Notices to UAE in this proceeding should be sent to the following:

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**Request for Relief**

UAE hereby respectfully asks the Commission to:

1. Enter a deferred accounting order pursuant to Utah Code Ann. §54-4-23 ordering and directing RMP to defer as a regulatory liability all Incremental REC Revenue from and after the date of this Application until the effective date of new rates set in a future ratemaking proceeding;
2. Set a scheduling conference in this docket in order to establish deadlines for submission of position statements, testimony and/or briefs, and a hearing, to the extent a hearing is necessary or appropriate; and
3. Grant such other and further relief as the Commission may determine to be appropriate.

DATED this 22<sup>nd</sup> day of February, 2010.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_  
Gary A. Dodge  
Attorneys for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 22<sup>nd</sup> day of February, 2010, to the following:

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