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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. 11-035-200 MOTION OF ROCKY MOUNTAIN POWER TO STRIKE PRE-FILED SUPPLEMENTAL DIRECT TESTIMONY OF J. ROBERT MALKO AND FOR SUFFICIENT TIME TO FILE SUPPLEMENTAL REBUTTAL TESTIMONY AND REQUEST FOR EXPEDITED SCHEDULE ON MOTION
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Code Ann. § 63G-4-206(d), Utah Admin. Code R.-746-100-3.H and R.-746-100-10.E.3, hereby moves the Public Service Commission of Utah (the “Commission”) to strike the Pre-Filed Supplemental Direct Testimony of J. Robert Malko (“Supplemental Testimony”) filed on behalf of the Utah Industrial Energy Consumers (“UIEC”) on July 13, 2012. The Company moves to strike (“Motion”) the Supplemental Testimony because UIEC filed the testimony over one month after the June 11, 2012, deadline set forth in the Scheduling Order dated March 2, 2012, (“Scheduling Order”) without good cause to do so, showing complete disregard for the process set out by the Commission.

Given the current schedule in this matter, the Company further requests that the Commission set an expedited schedule for consideration of this Motion. If parties are given 15 days to respond to this Motion, responses will not be due until August 1, 2012. Accordingly, Rocky Mountain Power requests that the Commission require responses to this Motion to be filed by July 23, 2012, and rule on the Motion not later than July 26, 2012. In the event the Commission determines to deny the Motion in its entirety, the Company nonetheless requests that the Commission allow it to file testimony responsive to the Supplemental Testimony on the later of August 9, 2012, the date that surrebuttal on revenue requirement is due, or five (5) business days after the Commission issues an order on this Motion.

I. BACKGROUND

The Company filed its application and direct testimony in this docket on February 15, 2012. The Commission's Scheduling Order required all non-company witnesses to file their direct testimony by June 11, 2012. This permitted the non-Company parties nearly four months to analyze and conduct discovery on the Company's direct testimony and to prepare their direct testimony. Even though the Company made a complete filing, providing extensive information to the other parties at the outset of the case, UIEC took full advantage of the time available for discovery, serving over 33 sets of discovery requests on the Company between February 15 and July 6, 2012.

Dr. Malko filed direct testimony on June 11, 2012. On July 13, 2012, over one month after the deadline for direct testimony contained in the Scheduling Order, UIEC filed supplemental direct testimony. The Scheduling Order has no provision allowing non-Company parties to file supplemental direct testimony. In addition, UIEC filed its Supplemental Testimony without seeking leave from the Commission to make such a filing.

In his Supplemental Testimony, Dr. Malko disingenuously implies that the reason why UIEC filed the Supplemental Testimony on July 13, 2012 was because the Company was late in responding to data requests served by UIEC. This is completely and categorically untrue. As shown in the table below, the Company filed its responses to the relevant data requests on time. Indeed, in regard to Set 32, the Company provided responses 5 days before the due date. The sole reason that the relevant data responses referenced in the Supplemental Testimony had not been received was because they were not due until well after the filing deadline for UIEC's direct testimony. In regard to Set 9, UIEC served the set April 11, 2012 and the Company provided responses May 3, 2012, well before the June 11, 2012 deadline for non-Company direct testimony. In regard to Sets 30 and 32, the table below shows that UIEC was late in asking the data requests such that the information from the Company's responses could not be used in time to include in UIEC's direct testimony because responses were not due until well after UIEC's direct testimony was due. Indeed, UIEC didn't even serve Set 32 on the Company until July 3, 2012, long after its direct testimony was due and filed.

Intervenor	Set	Received	Due	Sent
UIEC	30	7-June	28-June	28-June
	30.3 1 st Supp	29-June		3-July
	30.3 2 nd Supp			12-July
UIEC	32	3-July	17-July	12-July

II. ARGUMENT

Pursuant to its authority to ensure a just, expeditious, and orderly hearing procedure,¹ the Commission should strike the Supplemental Testimony from the record. The testimony was filed contrary to the Commission's Scheduling Order and over one month after the filing

¹ See Utah Admin. Code R. 746-100-10.E.3.

deadline solely because Dr. Malko and UIEC failed to think of the argument Dr. Malko is now making in the Supplemental Testimony, prior to filing his direct testimony.

UIEC's failure to adhere to the Commission's schedule is inexcusable and the implication that it was the Company's fault is untrue. First, UIEC had possession of the majority of the information that Dr. Malko uses in support of his Supplemental Testimony, prior to 2012.² The only information UIEC was lacking in the table it used in the Supplemental Testimony was the information for 2011 which the Company provided to UIEC on an *expedited* basis. Had the Company not expedited its responses to Set 32, UIEC would not have been able to use the information in its Supplemental Testimony filed July 13, 2012. Thus the footnote in the Supplemental Testimony wherein Dr. Malko states "we were finally able to get the information we needed in response to UIEC 32.1, which was received the afternoon of July 12, 2012" is particularly disingenuous. The Company's response to data request UIEC 32.1 was not even due until July 17, 2012.

Although the Supplemental Testimony filed by UIEC witness Dr. Malko suggests that it was filed late because UIEC was waiting for a response to a data request from the Company, the Company's responses to the data requests were not due until well after the June 11, 2012 filing deadline. UIEC had approximately four months to conduct discovery in this case and served thirty-three sets of data requests. There is no reason why the 2011 information underlying the Supplemental Testimony could not have been gathered during this extensive discovery period, especially given that UIEC already had in its possession the information for 2009 and 2010.

² See attached UIEC Data Request 32.1. The request included a table with information the Company had provided to UIEC in Docket No. 10-035-124, the 2010 general rate case. The UIEC data request included amounts for 2006-2010 as part of the question, and only asked the Company to add the information for 2011. The Company had already provided to UIEC the information related to "Natural Gas Swap Losses" May 2, 2012. UIEC asked for the remaining information on July 3, 2012 and the Company expedited its responses to such request, which would have been due July 17, 2012 had it not been expedited to July 12, 2012.

UIEC simply failed to think of the argument it is making in its Supplemental Testimony until well after its direct testimony was due. The Commission should not reward UIEC for this behavior by allowing the Supplemental Testimony in the record. This will undermine the process in this and in future cases.

III. CONCLUSION

By striking the Supplemental Testimony, the Commission will confine this proceeding to those issues appropriately raised before the Commission in accordance with the Scheduling Order. There is no reason or excuse for filing the Supplemental Testimony over one month after the non-Company direct testimony due date of June 11, 2012. However, if the Commission decides that the Supplemental Testimony should remain in the record, due process requires it to allow the Company sufficient time to respond.

The Company also respectfully requests that the Commission expedite the schedule for dealing with this Motion, by requiring parties wishing to respond to the Motion to do so by July 23, 2012 and by ruling on the Motion by not later than July 26, 2012. In the event the Commission determines to deny the Motion in its entirety, the Company respectfully requests that the Commission allow it to file testimony responsive to the Supplemental Testimony on the later of August 9, 2012, the date that surrebuttal on revenue requirement is due, or five (5) business days after the Commission issues an order on this Motion.

RESPECTFULLY SUBMITTED: July 17, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 17th day of July, 2012, to the following:

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