

Paul H. Proctor (2657)  
Assistant Attorney General  
Utah Office of Consumer Services  
Mark L. Shurtleff (4666)  
Attorney General  
160 East 300 South  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone (801) 366-0552  
pproctor@utah.gov

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of the Utah Office of Consumer Services for a Deferred Accounting Order Directing Rocky Mountain Power to Defer All Bonus Depreciation Allowed for 2010 through 2011 by the Small Business Jobs Act as amended.	Docket No. 11-035-  <b>UTAH OFFICE OF CONSUMER SERVICES' APPLICATION FOR DEFERRED ACCOUNTING ORDER FOR 2010 – 2011 BONUS DEPRECIATION</b>
--	---

The Utah Office of Consumer Services, authorized by Utah Code Ann. §54-10a-301(2) (West Supp. 2010), requests an order from the Utah Public Service Commission requiring Rocky Mountain Power (Company) to defer for later ratemaking treatment the impact on accumulated deferred income taxes and associated impact on rate base for plant additions that are currently being recovered in rates which results from the tax benefits available to the Company under *The Small Business Jobs Act of 2010* signed September 27, 2010, which extended a Recovery Act provision for 50 percent “bonus depreciation” through 2010, and *The Reid-McConnell Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010*, signed December 17, 2010.

Utah Code Ann. §§ 54-4-1, 54-4-23 and 54-4-24 (West 2004) provide the Commission authority to grant the requested relief.

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. The Office is charged with assessing the impact of utility rate changes and regulatory actions on residential and small commercial consumers, and advocating their interests before the Commission.

3. As a consequence of legislation reinstating and/or retroactively allowing additional tax depreciation deduction allowances for certain property, “bonus depreciation”, the Company’s Accumulated Deferred Income Taxes that serve to offset or reduce rate base has significantly increased in excess of the amounts the Company incorporated in rate case projections or in other regulatory applications such as requests for alternative cost recovery for major plant additions, Utah Code Ann. §54-7-13.4 (West Supp. 2010). The Company expects net cash flow will in the next two years increase significantly due to bonus depreciation legislation. See, B. Williams Direct Testimony, January 2011, lines 76 to 90, Docket 10-035-124.

4. Generally, the Company is allowed to recover the cost of capital expenditures over time according to a depreciation schedule. The depreciation schedule for financial reporting purposes differs from the depreciation allowed for income tax purposes, resulting in accumulated deferred income taxes, which serve as an offset to rate base. Congress allowed businesses, beginning January 1, 2008 through December 31, 2009, to take an additional depreciation deduction allowance for tax purposes equal to 50

percent of the cost of the depreciable property placed in service in those years. Under the *Small Business Jobs Act of 2010*, this temporary increase in the depreciation deduction allowance was retroactively extended to include January 1, 2010 through December 31, 2010. *The Reid-McConnell Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010* extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, the bill provides for 100 percent bonus depreciation. For investments placed in service after December 31, 2011 and through December 31, 2012, the bill provides for 50 percent bonus depreciation.

5. In its Response to UIEC Data Request 1.62, March 1, 2011, Docket No. 10-035-124, the Company describes available bonus depreciation tax benefits as follows:

#### **UIEC Data Request 1.62**

For what years does RMP anticipate that tax benefits are available to it under the bonus depreciation law that is part of the *Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010* (hereinafter the “Bonus Depreciation Act”)?

#### **Response to UIEC Data Request 1.62**

Generally speaking, property is eligible for bonus depreciation during 2010, 2011, and 2012 when it meets the following requirements:

- > The property is tangible personal property with a tax life of 20 years or less;
- > The taxpayer is the original, or first, user of the property;
- > The property must be acquired during the relevant period; and
  - 50% Bonus: After 12/31/2007 and prior to 09/09/2010, or in 2012
  - 100% Bonus: After 09/08/2010 and prior to 01/01/2012
- > The property must be placed in service during the relevant period.
  - 50% Bonus: After 12/31/2007 and prior to 09/09/2010, or in 2012
  - 100% Bonus: After 09/08/2010 and prior to 01/01/2012

The Company intends to take bonus depreciation on all eligible property. Eligible property during the time period covered by this data request and the respective bonus depreciation rates are as follows:

- > New tangible personal property with a tax life of 20 years or less that is acquired and placed in service after 12/31/2007 and prior to 09/09/2010 is eligible for 50% bonus depreciation;
- > New tangible personal property with a tax life of 20 years or less that is acquired and placed in service after 09/08/2010 and prior to 01/01/2012 is eligible for 100% bonus depreciation; and
- > New tangible personal property with a tax life of 20 years or less that is acquired after 12/31/2007 and prior to 09/09/2010, and is placed in service after 09/08/2010 and prior to 01/01/2012, is eligible for 50% bonus depreciation.

6. During the effective periods in which bonus depreciation has been or will be available to the Company, the Company has acquired or will acquire property that is eligible for bonus depreciation. In particular, but not exclusively, the property described in Utah PSC Docket No. 10-035-13, Major Plant Additions I, and described in Utah PSC Docket No. 10-035-89, Major Plant Additions II, are eligible for bonus depreciation. Additionally, the majority of the plant additions for the period January 1, 2010 through June 30, 2010 that were incorporated in the test year in Utah PSC Docket No. 09-035-23 are eligible for bonus depreciation.

7. In the case of MPA I and the qualifying additions for the period January 1, 2010 through June 30, 2010 described above, none of the bonus depreciation tax benefit has been included in rates. In the case of MPA II, the 50% bonus depreciation tax benefit associated with the property accrued to the benefit of ratepayers. See Order Approving Settlement Stipulation, December 21, 2010, Docket Nos. 10-035-13, 10-035-14, 10-035-

89. See also December 6, 2010 Hearing Transcript; D. L. Taylor, p. 14, lines 7 to 15; W. Powell, p. 27, lines 10 to 17; Commissioners' Questions, p. 34, line 22 to p. 37, line 4. However, *The Reid-McConnell Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010* applies 100% bonus depreciation to these assets placed in service after September 8, 2010. Consequently, bonus depreciation was not fully applied to the MPA II investments.

8. For the purposes of the pending general rate case, Docket No. 10-035-124, the Company contends that it has forecasted all qualifying assets placed in service during 2011 as eligible for 100% bonus depreciation, and all qualifying assets placed in service during 2012 as eligible for 50% bonus depreciation. The Company also quantified the total bonus depreciation on qualifying assets placed in service during 2010, 2011 and 2012, for determining the accumulated deferred income tax offset to rate base in the pending general rate case. "At the federal statutory tax rate of 35%, the temporary tax benefit of the bonus depreciation and related cash flow is expected to be approximately \$554.5 million for 2010, \$411.3 million for 2011 and \$137.6 million for 2012." Response to UIEC Data Request 1.69, March 1, 2011, Docket No. 10-035-124.

9. The rate and regulatory impacts of legislation extending and/or retroactively applying bonus depreciation to plant additions already in service or forecast through 2012 are unforeseeable and extraordinary. The Company expects significantly increased net cash flow and a substantial increase in the balance of Accumulated Deferred Income Taxes that offsets rate base, and thus a significant decrease to utility rate base as compared to what would occur absent the bonus depreciation provisions.

10. A deferred accounting order for the impacts of bonus depreciation on the accumulated deferred income tax offset to rate base is both appropriate and necessary. The Commission has recognized that tax law changes as the Office describes in this application, create an unforeseen and extraordinary change in tax expense that merits the accounting order the Office requests. Order, September 13, 2010, In the Matter of Post-Retirement Prescription Drug Coverage Tax Benefits, Docket No. 10-035-38.

11. The Commission has established guidelines for implementing an accounting order to capture a change in utility expense for subsequent amortization in rates. See Report and Order in Docket Nos. 06-035-163, 07-035-04, 07-035-14, issued, January 3, 2008, pp. 15-17. Such an order can be justified when unforeseeable and extraordinary changes in expenses occur.

12. A tax law change is extraordinary when the amount of the change in tax expense it generates is extraordinary and when the change is infrequent. In Docket No. 10-035-38, the Commission approved a deferred accounting order for system-wide revenue requirement impact of about \$18.5 million, of which approximately \$6.5 million would be allocated to Utah. The Company estimates the cash flow impact of bonus depreciation is \$1,103.4 million. The additional bonus depreciation for tax purposes will result in a significant increase in accumulated deferred income taxes, which is an offset to rate base. The impact of the reduction to rate base is significant and greatly exceeds the \$6.5 million impact identified in Docket No. 10-035-38.

13. Bonus depreciation tax law changes are outside the Company's control. They were unforeseen as demonstrated by uncertainty about the legislative extension and

impact of bonus depreciation the Company expresses in its major plant addition applications and in the prior general rate case, Docket No. 09-035-23. Most important, the bonus depreciation tax law changes were included in a series of Federal legislation intended to stimulate recovery from the worst financial crisis since the Great Depression.

14. In order to ensure just and reasonable rates for the Company's Utah ratepayers, the Office requests that the Commission require the Company to defer for later ratemaking treatment the impacts on revenue requirement resulting from the increase in the Accumulated Deferred Income Taxes for the following:

a. Bonus depreciation for qualifying assets placed into service January 1, 2010 to June 30, 2010 omitted from Docket No. 09-035-23. As the test year in that case included the projected plant additions for the period January 1, 2010 through June 30, 2010, which are now subject to the 50% bonus depreciation provisions, the impact on average test year rate base resulting from the bonus depreciation on those additions should be deferred.

b. Bonus depreciation for qualifying assets subject to the June 15, 2010 Report and Order in Docket No. 10-035-13.

c. Bonus depreciation for qualifying assets subject to the December 21, 2010 Order in Docket No. 10-035-89, to the extent not reflected in the Settlement Stipulation approved in the June Order and in the percentage allowed by *The Reid-McConnell Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010*.

15. While the Company has incorporated the estimated impacts of the bonus depreciation on the accumulated deferred income tax offset to rate base as part of its current rate case, Docket No. 10-035-124, the resulting benefit of the reduced rate base will not flow to customers until such future time as the rates resulting from the current general rate case go into effect.

16. As described in paragraph seven ratepayers are harmed by the higher rate base incorporated in current rates that does not reflect the now known impact resulting from the changes in tax law. Absent the deferred accounting order requested by the Office herein, ratepayers would permanently lose the benefit of the impact of the resulting increase in accumulated deferred income taxes and reduction to rate base from the time rates from Docket Nos. 09-035-23, 10-035-13 and 10-035-89 went into effect through such time as rates from the current general rate case go into effect. During this same period Company is receiving and retaining the benefit of the significant increase in cash flow resulting from the bonus depreciation.

17. In requesting this deferred accounting order, the Office is not requesting any final ratemaking determination as to the amount or ratemaking treatment of the increase in accumulated deferred income taxes resulting from bonus depreciation and the resulting reduction to rate base. Rather, the Office requests an accounting order to ensure that the reduction to rate base resulting from the increase in accumulated deferred income taxes caused by the allowance of bonus depreciation can be properly and fully considered and dealt with in a future ratemaking proceeding.



18. Notices to the Office pertaining to this application should be sent to:

Cheryl Murray  
Utah Office of Consumer Services  
160 East 300 South, Suite 200  
PO Box 146782  
Salt Lake City, UT 84114-6782  
Telephone (801) 530-6957  
[cmurray@utah.gov](mailto:cmurray@utah.gov)

Paul H. Proctor  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone (801) 366-0552  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Donna Ramas  
Larkin & Associates  
15728 Farmington Road  
Livonia MI 48154  
[donnaramas@aol.com](mailto:donnaramas@aol.com)

Accordingly, the Office respectfully requests that the Commission:

1. Enter a deferred accounting order pursuant to Utah Code Ann. §54-4-23, ordering and directing Rocky Mountain Power to defer for later ratemaking treatment, the impacts of bonus depreciation on the accumulated deferred income tax offset to rate base which result from the tax benefits available to the Company under *The Small Business Jobs Act of 2010* and *The Reid-McConnell Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010*;
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 March 2011.

---

Paul H. Proctor  
Assistant Attorney General  
Attorney for the Utah Office of Consumer  
Services

## CERTIFICATE OF SERVICE

(Docket No. 11-035-\_\_\_)

I hereby certify that on this 22<sup>nd</sup> day of March 2011, I served by electronic mail, a true and correct copy of the foregoing Application for Deferred Accounting Order for 2010 – 2011 Bonus Depreciation to:

Patricia Schmid  
ASSISTANT ATTORNEY GENERAL  
500 Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

David L. Taylor  
Yvonne R. Hogle  
Mark C. Moench  
ROCKY MOUNTAIN POWER  
201 South Main Street, Suite 2300  
SLC, UT 84111  
[Dave.Taylor@pacificorp.com](mailto:Dave.Taylor@pacificorp.com)  
[yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com)  
[mark.moench@pacificorp.com](mailto:mark.moench@pacificorp.com)

F. ROBERT REEDER  
WILLIAM J. EVANS  
VICKI M. BALDWIN  
PARSONS BEHLE & LATIMER  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
[vbaldwin@parsonsbehle.com](mailto:vbaldwin@parsonsbehle.com)  
[bobreeder@parsonsbehle.com](mailto:bobreeder@parsonsbehle.com)  
[wevans@parsonsbehle.com](mailto:wevans@parsonsbehle.com)

Chris Parker  
William Powell  
Dennis Miller  
Utah Division of Public Utilities  
160 East 300 South, 4th Floor  
Salt Lake City, UT 84111  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)  
[wpowell@utah.gov](mailto:wpowell@utah.gov)

[dennismiller@utah.gov](mailto:dennismiller@utah.gov)

Gary Dodge  
Hatch James & Dodge  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

Kevin Higgins  
Neal Townsend  
ENERGY STRATEGIES  
39 Market Street, Suite 200  
Salt Lake City, UT 84101  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)  
[ntownsend@energystrat.com](mailto:ntownsend@energystrat.com)

Peter J. Mattheis  
Eric J. Lacey  
Brickfield, Burchette, Ritts & Stone, P.C.  
1025 Thomas Jefferson St., N.W.  
800 West Tower  
Washington, D.C. 20007  
[pjm@bbrslaw.com](mailto:pjm@bbrslaw.com)  
[elacey@bbrslaw.com](mailto:elacey@bbrslaw.com)

Holly Rachel Smith, Esq.  
Holly Rachel Smith, PLLC  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

Kurt J. Boehm, Esq.  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
E-mail:  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)

---

Paul H. Proctor