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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of:	Docket No. 13-035-184
Rocky Mountain Power's Intent to File a General Rate Case on or about January 3, 2014	Office of Consumer Services' Joinder to Utah Industrial Energy Consumers' Objection to Proposed Confidential Information Certificate

COMES NOW, the Office of Consumer Services ("Office") and hereby files this Joinder to the Utah Industrial Energy Consumers' ("UIEC") Objection to Proposed Confidential Information Certificate ("Objection"). On December 27, 2013, UIEC filed its Objection to the Proposed Confidential Information Certificate ("Draft Appendix A") submitted by Rocky Mountain Power Company ("Company"). At the time of filing the Objection, UIEC had not sought status as an intervening party, and thus presented its Objection via letter addressed to the Public Service Commission of Utah ("Commission"). As the Office is afforded intervenor status via Utah Admin. Code r746-100-5 (2013), the Office submits its position styled as a Joinder to UIEC's Objection. Furthermore, while the Company has responded to UIEC's Objection and submitted a

revised proposed nondisclosure agreement, the Office remains concerned by the Company's suggestion to merely clarify Draft Appendix A to read "**If applicable**, I verify that I have returned or destroyed all confidential materials from other dockets in which I have participated pursuant to Rule 746-100-16.3.e." The Office and the Company have a long standing difference of opinion regarding the scope of Utah Admin. Code 746-100-16.3.e. The Company's continued attempt to move beyond the nondisclosure agreement previously approved by the Commission brings this difference of opinion to the forefront. Accordingly, the Office submits its Joinder to UIEC's Objection.

On December 20, 2013, the Company filed Draft Appendix A with the Commission, identifying the Company's desire that "parties in this docket execute [Draft Appendix A] prior to obtaining access to confidential information." December 20, 2013, Cover Letter. Draft Appendix A incorporates language regarding receipt and use of confidential information codified in Utah Admin. Code r746-100-16.1.e (2013). Specifically, as suggest by the Rule, Draft Appendix A contains an attestation that the signatory has reviewed the Commission rule regarding the review and use of confidential information, and an affirmation that the signatory will comply with Utah Admin. Code r746-100-16 in the current docket. Thereafter, Draft Appendix A moves beyond the scope of Utah Admin. Code r746-100-16.3.e ("Return Rule"), further requiring the signatory attest that all confidential information received from other dockets has been returned to the Company or destroyed. This final attestation exceeds requirements set forth in this Commission's rules, and the Office joins in UIEC's objections and concerns regarding its inclusion in the current docket, as set forth below.

As an initial point, the Office does not believe it is subject to the Return Rule, which the Company is apparently seeking to enforce through the language included in Draft Appendix A. The Return Rule established the procedure for return or destruction of confidential materials exchanged in the course of a proceeding before the Commission. The Return Rule establishes that confidential information shall be returned to the providing party “within 30 days after final order, settlement, or other conclusion of the matters in which they were used...” Utah Admin. Code r746-100-16.3.e (2013). The Return Rule continues, and specifically provides “[i]n order to facilitate [its] ongoing responsibility, this provision shall not apply to...the Office of Consumer Services, which may retain Confidential Information obtained under this rule...subject to the other terms of this rule....” Id.

The Office asserts the phrase “this provision” refers to the entirety of the provision relating to the return or destruction of confidential information. The Office submits this interpretation gives the most effect to the clear intent of the exception: “to facilitate [the Office’s] ongoing responsibility” as established in its statutory charge. See Utah Code Ann. § 54-10a-301 (2013). The Company has presented an alternative, more restrictive, interpretation of the Return Rule to the Office in past correspondence. The Office objects to the Company’s unilateral inclusion of reference to the Return Rule in any nondisclosure agreement approved in this docket as an attempt, unsupported by Commission ruling, to impose the Company’s interpretation of the Return Rule on the Office and its experts. The Office has executed, and will continue to execute, the previously approved Appendix A, as suggested as acceptable by the Company.

Draft Appendix A, and the December 31, 2013, proposal from the Company, would require attestation that the signatory has “returned or destroyed all confidential materials from other dockets....” The Office is involved in numerous dockets involving, *inter alia*, the Energy Balancing Account, the Renewable Energy Credit Balancing Account, and various dockets relating to historic merger activity, each with long-standing and ongoing obligations for the Office. Under these circumstances, the “other conclusion” referenced by the Return Rule allows the Office, and other similarly participating parties, the right to retain confidential information beyond the 30-day window otherwise established. The broad language proposed by the Company in Draft Appendix A would likely contravene the explicit right provided by the Return Rule to retain confidential information through the “conclusion” of individual, independent dockets. Indeed, the Company’s December 31, 2013, proposal to require compliance with the Return Rule as a precondition to participation in the current docket, “if applicable,” exacerbates this problem by imposing an unnecessary element of uncertainty regarding an accurate response to this requirement of the proposed nondisclosure agreement. The Commission should reject Draft Appendix A and the Company’s December 31, 2013, proposal to clarify the sentence referring to Rule 746-100-16.3.e.

Further, the Return Rule concludes with a specific allowance for the use and disclosure of confidential information obtained pursuant to this Commission’s rule on confidential information for use “in any subsequent Commission dockets or proceedings....” Utah Admin. Code r746-100-16.3.e. This portion of the Return Rule

allows any party to use confidential information in subsequent dockets or proceedings if: 1) the party complies with the terms of the rule regarding confidentiality and/or terms of any protective order; 2) provides notice of the intent to use such confidential information; and 3) specifies the original source of the information. The Office submits a plain language reading of the current rule may identify inherent inconsistencies, such as the right to use confidential information in subsequent proceedings, while at the same time being under an obligation to return or destroy such information. Under such a circumstance, the Office believes the Commission, not the Company through a docket-specific nondisclosure agreement, is the proper entity to accurately interpret and enforce the multiple prongs of, and exceptions to, the Return Rule. Accordingly, the Commission should reject Draft Appendix A, or any attempt to modify the language of Appendix A in this docket, beyond that suggested by Utah Admin. Code r746-100-16.1.e.

Finally, the Office objects to the Company's apparent attempt to usurp the authority of this Commission to act as the entity enforcing Commission rules. The Office submits that, if the Company wishes to ensure enforcement of, and compliance with, Utah Admin. Code r746-100-16.3.e, the proper mechanism is to request this Commission act, within the individual relevant docket(s), to require parties subject to the Return Rule to attest they have complied with the rule or are otherwise exempt from compliance. The Office maintains that the Company's attempt, through an overly-expansive nondisclosure agreement, to require compliance with the Return Rule as it applies to independent dockets, is an inappropriate infringement upon the

Commission's authority to enforce its own rules. In short, the nondisclosure agreement in this docket should not be used by the Company as a drift net, cast wide and leveraged against meaningful participation in the current general rate case, to coerce compliance with Commission rules, when the Company has failed to seek compliance in a timely manner in "other dockets." Draft Appendix A is an over-reaching attempt by the Company to appoint itself the enforcer of Commission rules and should be rejected.

The Office, pursuant to the above, hereby joins UIEC's Objection, requests the Commission reject Draft Appendix A and the December 31, 2013, Company proposal, and require parties execute and file a nondisclosure agreement consistent with those employed in past dockets and in compliance with the scope and terms established in Utah Admin. Code r746-100-16.1.e.

Submitted this 3rd day of January, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of The Office of Consumer Services' Joinder to UIEC's Objection to Proposed Confidential Information Certificate, Docket No. 13-035-184 was sent to the following individuals as identified below, this 3rd day of January, 2014.

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