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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. 13-035-184 ROCKY MOUNTAIN POWER'S MOTION TO ALLOW PARTIES TO RESPOND TO THE PRE-FILED DIRECT TESTIMONY OF JONATHAN A. LESSER IN LEGAL BRIEF AND IN PHASE II
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Administrative Code R746-100-3(J), hereby moves the Public Service Commission of Utah (the “Commission”) to allow parties to address, in briefs, legal issues and in Phase II (as defined below) cost of service issues, raised in the Pre-Filed Direct Testimony of Jonathan A. Lesser (“Direct Testimony”), filed on behalf of the Utah Industrial Energy Consumers (“UIEC”) on May 1, 2014. In support of the Motion, the Company states as follows:

1. The Company filed its application and direct testimony in this docket on January 3, 2014.
2. Pursuant to a scheduling conference, convened on January 16, 2014, the Commission issued a Scheduling Order, bifurcating this docket into two phases: phase I to address revenue requirement (“Phase I”) and phase II to address cost of service and schedule 31 (“Phase II”).

3. Pursuant to the Scheduling Order, on May 1, 2014, UIEC filed with the Commission and served on the parties the Direct Testimony of witness Mr. Jonathan A. Lesser.

4. In his testimony, Mr. Lesser states that he holds a B.S. in mathematics and economics, and MA and PhD degrees in economics.¹ He testifies that he has held various business positions with various companies during his career and currently is President of Continental Economics.² Mr. Lesser's testimony does not list any credentials or qualifications to indicate that he is competent to testify regarding the legal issues he raises.³

5. Nevertheless, Mr. Lesser opines on legal issues that require legal research and legal interpretation that cannot be properly addressed in testimony including, without limitation, the following:

(a) The restructuring of the natural gas industry by the Federal Energy Regulatory Commission ("FERC") and FERC orders implementing voluntary open access;⁴

(b) The transition that was "engineered" by FERC that included changes in natural gas pipelines' rate design;⁵

(c) Whether FERC prohibits recovery by pipelines of costs associated with unsubscribed capacity or discounted rates from captive shippers ;⁶

(d) FERC principles as it transitioned the natural gas pipeline industry into its current structure;⁷

¹ Docket No. 13-035-184, Lesser Direct Test. p.2, ll. 35-36 (May 1, 2014).

² *Id.* 1, l. 12.

³ *See generally* Lesser Direct Test.

⁴ Docket No. 13-035-184, Lesser Direct Test., p. 8-9, ll. 164 – 183 (May 1, 2014).

⁵ *Id.* 4, ll. 73-80 & p. 5, ll. 85-87.

⁶ *Id.* 15, ll. 300-310.

⁷ *Id.* 7-8, ll. 152-158, 164-183.

(e) The reasons FERC adopted straight fixed variable pricing for interstate natural gas pipeline as part of unbundling pipeline services;⁸

(f) FERC's reasons for not guaranteeing pipeline recovery of natural gas pipelines' fixed costs;⁹

(g) Interpretation of case law related to the effects of market competition on a streetcar company;¹⁰

(h) Interpretation of case law dealing with denial of costs of an abandoned nuclear plant;¹¹ and

(i) Whether a prudence determination protects a utility against changes in markets.¹²

6. Each of these is a legal issue that requires legal research and legal interpretation that cannot be properly rebutted or addressed in testimony. They require the interpretation of legal concepts, FERC orders, U.S. Supreme Court and other courts' findings on particular issues, as well as natural gas pipelines' tariffs filed with FERC. More than fifty percent of Mr. Lesser's testimony is devoted to discussion of these issues.

7. Mr. Lesser is not qualified to opine on these issues, and the Company cannot properly respond in testimony because its witnesses are also not qualified to do so.

8. In his testimony, Mr. Lesser also testifies regarding Utah rate design issues that this Commission has ordered be addressed in Phase II of this docket.¹³

⁸ *Id.* 11, 209-214.

⁹ *Id.* 12, 239-244 & p. 13, ll. 265-284.

¹⁰ *Id.* 18, ll. 358-365.

¹¹ *Id.* 18-19, ll. 368-383

¹² *Id.* 17, ll. 337-343

¹³ *Id.* 28, ll. 566-594.

For the foregoing reasons, the Company requests that the Commission set the legal issues raised in Mr. Lesser's testimony for legal briefing, and allow parties to address Mr. Lesser's rate design testimony in Phase II of this docket. In the alternative, if the Commission makes no determination regarding this motion prior to the Phase II rebuttal testimony due date, the Company hereby reserves the right to respond to the Direct Testimony in post hearing brief and in Phase II rebuttal testimony, as applicable.

RESPECTFULLY SUBMITTED: May 15, 2014

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 15th day of May, 2014, to the following:

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