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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of:	Advice No. 13-07
Advice No. 13-07, Electric Service Regulation No. 3 – Electric Service Agreements	ROCKY MOUNTAIN POWER’S POST-HEARING BRIEF

PacifiCorp dba Rocky Mountain Power (the “Company”) respectfully submits this *Post-Hearing Brief* in support of its Advice No. 13-07, Electric Service Regulation No. 3 – Electric Service Agreements, in which the Company requests permission to make a change to its tariffs to add language to Electric Service Regulation 3 to indicate customers are responsible for reasonable court costs, attorney’s fees and/or collection agency fees incurred in the collection of unpaid debt following the due date of their closing bill.

The Public Service Commission of Utah (the “Commission”) requested the parties file post-hearing briefs to address the question of whether the Commission has jurisdiction to set a maximum collection percentage to be collected by a collection agency from former Rocky Mountain Power customers, or whether Utah Code 12-1-11 precludes the Commission from doing so.

Rocky Mountain Power respectfully submits that the Commission does not have the jurisdiction to place a direct limit on the percentage that a collection agency may charge to a former Rocky Mountain Power customer.

The Commission is granted its general authority by Utah Code § 54-4-1 which provides, in relevant part:

The Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.

The Commission is not granted authority over private individuals or businesses by any statute or rule. In addition, there is Utah case law which states that if a business or concern is not public service, where the public has no legal right to the use of it, or where the business or operation is not open to an indefinite public, it is not subject to the jurisdiction or regulation of the commission. Comm'n v. Nelson, 65 Utah 457 (1925), citing Humbird Lumber Co., v. Public Utilities Comm., 39 Idaho, 505, 228 P. 271; Story v. Richardson, 186 Cal. 162, 198 P. 1057, 18 A. L. R. 750.

Further, the state may not, by mere legislative fiat or edict or by regulating order of a commission, convert private contracts or private business into a public utility or make its owner a common carrier. Comm'n v. Nelson, 65 Utah 457 (1925), citing Producers' Transp. Co. v. Railroad Comm., 251 U. S. 228, 40 S. Ct. 131, 64 L. Ed. 239; Associated Pipe Line Co. v. Railroad Comm., 176 Cal. 518, 169 P. 62, L. R. A. 1918C, 849; Allen v. Railroad Comm., 179 Cal. 68, 175 P. 466, 8 A. L. R. 249; State v. Public Service Comm., 117 Wash. 453, 201 P. 765, 203 P. 3. So. (1921).

As described above, the collection agencies which Rocky Mountain Power contracts with to collect its debts are not subject to the jurisdiction of the Commission. The maximum amount these agencies may charge as a collection fee is set by Utah Code § 12-1-11, and may not exceed the lesser of: the actual amount Rocky Mountain Power is required to pay the third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to Rocky Mountain Power for a debt; or 40% of the principal amount owed to Rocky Mountain Power for a debt.

The percentage that is charged by various collection agencies working on behalf of Rocky Mountain Power is a negotiated number that is subject to varying market forces. This fee is *not* a rate that is being charged by Rocky Mountain Power to its customers; it is a collection fee that is collected by a third party from *former* customers, and may not exceed the maximum amounts established by the provisions of Utah Code § 12-1-11.

CONCLUSION

For the reasons stated above, the Commission should conclude that establishing a collection fee percentage maximum is outside of its jurisdiction.

DATED this 15th day of July, 2013.

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