

Thadeus B. Culley
401 Harrison Oaks Blvd, Suite 100
Cary, NC 27513
Telephone: 510-314-8205
Email: tculley@kfwlaw.com

Bruce Plenk (USB# 02613)
2958 N St Augustine Pl
Tucson AZ 85712
Telephone: 520 909-1389
Email: solarlawyeraz@gmail.com

Counsel for The Alliance for Solar Choice

Sophie Hayes
1014 2nd Avenue
Salt Lake City, UT 84108
Telephone: 801-363-4046
Email: sophie@utahcleanenergy.org

Counsel for Utah Clean Energy

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Investigation of the
Costs and Benefits of Pacificorp’s Net
Metering Program

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Docket No. 14-035-114
JOINT RESPONSE OF THE
ALLIANCE FOR SOLAR CHOICE
AND UTAH CLEAN ENERGY IN
OPPOSITION TO ROCKY
MOUNTAIN POWER’S MOTION
TO STRIKE UCE AND TASC’S
REPLIES TO LEGAL BRIEF

Pursuant to Utah Administrative Code R746-100-3(K)(2), The Alliance for Solar Choice (“TASC”) and Utah Clean Energy (“UCE”), hereinafter referred to as “Joint Parties,” respectfully submit their joint response in opposition to Rocky Mountain Power’s (“RMP” or “the Company”) Motion to Strike UCE and TASC’s Replies to Legal Brief.

The Company moved to strike TASC's and UCE's replies on the grounds that TASC and UCE submitted improper replies to a motion. The Joint Parties respectfully suggest that before there can be an improper response or reply to a motion, there must first be a motion. For the following reasons, the Joint Parties request that the Commission deny the Company's motion to strike.

If the **Company's legal argument** is correct—that Utah Rule of Civil Procedure 7(c) (“Rule 7(c)”) governs the submission of pre-testimony filings in this matter—the consequence is that no party filed a proper response or reply to a motion because no “motion” was timely filed. If the pre-testimony filing schedule is strictly governed by Rule 7(c), the Commission would have sufficient grounds to reject the Company's Legal Brief and all subsequent responsive filings as not conforming to the motion prerequisite.

If the **Company's actions** are correct, however, then the March 19 Order must be read as leaving open the possibility that parties may submit legal briefing on the interpretation of § 54-15-105.1, independent of the filing of a motion seeking specific relief. Such flexibility in the Commission's March 19 Order should prevail over the procedural rigidity of Rule 7(c).

The Company's action in filing a stand-alone brief is consistent with the Joint Parties' understanding of the Hearing Officer's statements at the March 16 Scheduling Conference that he intended to “leave it open” for parties to file *either* briefs or motions within the procedural schedule for pre-testimony pleadings.¹ Of course, the Joint Parties note that the March 19 Order more prescriptively stated that parties could file “motions **with** supporting briefs.” This suggested to the Joint Parties that briefs **must** be paired with an accompanying motion. The

¹ The recording of the Scheduling Conference, Audio File Part 4 (March 16, 2015), captures discussion regarding scheduling of motions and briefs from approximately minute 4 to minute 8.

Joint Parties did not oppose the Company's right to make a non-conforming filing, but note that the apparent discord between the March 19 Order and the discussion at the March 16 scheduling conference created confusion and ambiguity regarding whether a motion was strictly required as a prerequisite for presenting legal argument. TASC and UCE, respectively, chose not file motions because TASC and UCE did not seek specific relief prior to the filing of testimony.²

The Commission enjoys sufficient discretion to avoid strict application of Utah Rule of Civil Procedure 7(c) under these circumstances. Indeed, Utah Commission Rule R746-100-3(K)(2) reflects a more permissive standard for the Commission to allow responsive pleadings in general.³ The Joint Parties recommend that the Commission resolve the procedural ambiguity in a manner that provides for the inclusion of all parties' filings and preserves their right to be heard on this matter.⁴

Consistent with the foregoing, the Joint Parties request that the Commission deny the Company's motion to strike and accept all pre-testimony filings for consideration.

Respectfully submitted this 25th day of June, 2015,

Thadeus B. Culley
Keyes, Fox & Wiedman LLP
401 Harrison Oaks Blvd., Suite 100
Cary, NC 27513
(510) 314-8205
tculley@kfwlaw.com

Sophie Hayes
Staff Attorney
Utah Clean Energy
1014 2nd Avenue
Salt Lake City, Utah 84103

Counsel for UCE

² The Joint Parties do not seek to limit evidence at this time and remain committed to working with parties to develop consensus-based recommendations regarding the cost-benefit framework.

³ R746-100-3(K)(2): "Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action."

⁴ See *Plumb v. State*, 809 P. 2d 734, 743 (1990) (ambiguity in notice can result in a deprivation of due process rights).

Counsel for TASC