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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p>In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program</p>	<p>Docket No. 14-035-114</p> <p><b>MOTION FOR LEAVE TO FILE SUPPLEMENT SURREBUTTAL TESTIMONY OF GARY HOOGEVEEN</b></p> <p><b>(Expedited Consideration Requested)</b></p>
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Rocky Mountain Power, a division of PacifiCorp (“Company” or “Rocky Mountain Power”), hereby moves the Commission for leave to supplement the surrebuttal testimony of Gary Hoogeveen pursuant to Utah Admin. Code R746-1-401 and 402.

## **INTRODUCTION**

The Company seeks leave from the Commission to supplement the surrebuttal testimony of Gary Hoogeveen based on belated information received from Intervenors Vivint Solar, Inc. (“Vivint”) and Auric Solar, LLC (“Auric”).

## **STATEMENT OF FACTS**

1. Intervenors have filed direct and rebuttal testimony in this matter with broad claims that changes to the Company’s Net Metering Program will cause wide-spread job loss and have a significant harmful effect on the solar industry in Utah.

2. In an effort to gather documents and information to verify or undermine these claims, the Company timely served Data Requests on Auric and Vivint on July 13, 2017 (more than a month before the hearing and nearly four weeks before surrebuttal was due) seeking documents and information related to their sales force, wages paid, costs to install solar panels, and profit margins realized by those companies on typical residential solar installations.<sup>1</sup>

3. While Vivint and Auric provided some responses to the Company’s Data Requests, they refused to produce the requested information on their costs to install panels, their sales prices, and their margins on these products claiming that such information was “commercially sensitive.”

4. On August 3, the Company filed a Statement of Discovery Issues (“Statement”) seeking to compel the production of the requested documents and information from Vivint and Auric, noting that the information was necessary for the Company’s surrebuttal testimony.

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<sup>1</sup> The Company noted at the time of serving these Data Requests that had the Company waited until July 18th to serve the requests that the responses would have been due sooner, as the Scheduling Order in this docket reduces the time for a response from 14 days to 7 days for requests served after July 18th. Nevertheless, in order to give the parties a full 14 days to gather the information, it served the requests prior to the 18th knowing a timely response would still give the Company 5 days before the deadline for filing surrebuttal testimony to incorporate the data. That is, an attempt to accommodate the responding parties actually resulted in the due date being closer to the date for surrebuttal testimony.

5. The Commission set the Statement for hearing on August 9, 2017.

6. On the afternoon of August 7, Vivint provided supplemental answers to its Data Requests. On August 8, 2017, the Company timely filed its surrebuttal testimony. Auric provided its supplemental data responses approximately eight hours *after* the Company's surrebuttal testimony had been filed, on August 8.<sup>2</sup>

7. As the Company suspected, the information belatedly produced is very informative as to the relative ability of these market representative's (or their customers') ability to absorb rate adjustments such as those put forward in this case.

8. As a result, the Company now seeks leave to supplement the surrebuttal testimony of Gary Hoogeveen to provide the Commission with the additional information contained in the recently-produced responses.

### **STANDARD OF REVIEW**

Like trial courts, the Commission has "broad discretion in managing the cases assigned to" them under Rule 16. *Posner v. Equity Title Ins. Agency, Inc.*, 2009 UT App 347, ¶ 23. While scheduling orders "are necessary to expedite the flow of cases through the court system and should not be lightly disregarded," "unforeseen circumstances do arise." *Boice v. Marble*, 1999 UT 71, ¶ 10. And "[o]n occasion, justice and fairness will require that a court allow a party to designate witnesses, conduct discovery, or otherwise perform tasks covered by a scheduling order after the court-imposed deadline for doing so has expired." *Id.* Here, the Company seeks leave to supplement its surrebuttal testimony after the surrebuttal deadline based on circumstances outside of its control, and despite the Company's diligence in pursuing the requested discovery.

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<sup>2</sup> Auric's agreement to voluntarily produce responsive documents was conditioned on the documents and information being designated Highly Confidential.

## ARGUMENT

### **A. The Company Should Be Granted Leave to Supplement its Testimony Based on Belated Responses from Vivint and Auric.**

The Company appropriately pursued discovery into Intervenor claims regarding the alleged economic impact of the proposed NEM Program changes on the solar industry by timely serving Data Requests in response to Vivint and Auric. Despite the Company's reasonable requests, Vivint and Auric refused to produce the requested information and a discovery dispute ensued. Ultimately, Vivint and Auric voluntarily produced the information prior to the scheduled hearing on the discovery dispute, but only after it was too late for the Company to incorporate the information into its surrebuttal testimony.

Accordingly, the Company seeks leave to supplement the surrebuttal testimony of Gary Hoogeveen to add one question and one answer based upon the information provided. A copy of the proposed supplemental testimony is attached hereto as Exhibit A.

In addition, the Company notes for the Commission that Auric's production was conditioned on an agreement to treat the responses as "Highly Confidential" based on Auric's contention that the answers contain commercially sensitive information that would damage Auric if the information was revealed to its competitors—several of whom are parties in this proceeding. The Company has no interest in circulating Auric's information to its competitors, and therefore agreed to treat the information contained as Highly Confidential. In accordance with that agreement, the Company has redacted the portions of Gary Hoogeveen's testimony that contain information designated as Highly Confidential and has produced unredacted portions of the testimony to only the Commission, the Office of Consumer Services, and the Division of Public Utilities. The Company leaves the determination as to whether any additional parties should receive unredacted copies of the supplemental testimony to the Commission and the parties who produced the information.

## CONCLUSION

Despite the Company's diligence in pursuing discovery during the approved discovery period, the Company did not receive the discovery responses until after the deadline for filing surrebuttal testimony. As a result, the Company seeks leave to supplement the surrebuttal testimony of Gary Hoogeveen to include information contained in the belated production.

DATED August 8th, 2017.

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

*/s/ D. Matthew Moscon* \_\_\_\_\_

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MOTION REQUESTING CANCELLATION OF HEARING RE MOTION TO COMPEL** was served by email this 8<sup>th</sup> day of August, 2017, on the following:

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