

REDACTED

REX W. OLSEN (#4895)  
Assistant Attorney General  
SEAN D. REYES (#7969)  
Utah Attorney General  
160 East 300 South, 5th Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857  
Telephone: (801) 366-0137  
E-Mail: [rolsen@utah.gov](mailto:rolsen@utah.gov)  
*Attorneys for Utah Office of Consumer Services*

---

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of the Voluntary Request of Rocky Mountain Power for approval of Resource Decision and Request for Accounting Order	<b>Docket No. 14-035-147</b> Utah Office of Consumer Services Motion to Compel Discovery and Request for Order Compelling Discovery
---	--

---

Pursuant to Utah Administrative Code R746-100-8, R746-440-1(3) and R746-11-3J the Utah Office of Consumer Services (“Office”) respectfully requests that the Public Service Commission (“Commission”) issue an Order compelling Rocky Mountain Power (“RMP”) or (“Company”) to comply fully with the Office’s First Data Request number 1.10 issued by the Office on December 23, 2014.

## BACKGROUND

1. On December 9, 2104 Rocky Mountain Power (“RMP”) or (“Company”) filed a Public Notice of Intent to File Voluntary Request for Approval of Resource Decision pursuant to Utah Administrative Code R746-440-1(2)(a). On December 16, 2014 the Company filed an Application for Approval of Transaction and for Deferred Accounting Order along with written testimony and supporting exhibits. The Company asked for approval of its decision to close the Deer Creek Mine before the full depletion of reserves, dispose of assets and to terminate the Company’s obligations to the United Mine Workers of America (“UMWA”).<sup>1</sup>

2. The Company has estimated that the costs associated with its decision to close the mine will be \$ [REDACTED].<sup>2</sup> These costs consist of unrecovered mine investments, closure costs and costs associated with the UMWA 1974 Pension Trust and retiree medical plan. Of the \$ [REDACTED] in total costs, the Company estimates that the UMWA related costs alone total \$ [REDACTED].<sup>3</sup> Thus, the UMWA related costs comprise more than one-third of all costs that the Company is seeking approval for in this docket.

3. The Office is reviewing the Company’s Application and associated estimated costs. The Office’s review has included discovery requests to the Company in order to verify the substantial costs related to the UMWA pension and retiree medical plan.

## ARGUMENT

---

1 Direct Testimony of Cindy Crane lines 320-323

2 Direct Testimony of Douglas K. Stuver, line 86.

3 Id. lines 84-85.

**A. The Office has in good faith conferred or attempted to confer to resolve this matter without intervention by the Commission<sup>4</sup>**

1. On December 23, 2014 the Office propounded its First Data Request to Rocky Mountain Power (“Data Request”). Paragraph 1.10 of the Data Request is as follows:

1.10 Please provide a copy of all correspondence to and from UMWA and its representatives during 2014 pertaining to the 1974 Pension Trust, the retiree medical obligations and the union agreement and settlement. This should include correspondence between UMWA (as well as its representatives) and PacifiCorp, Energy West and any affiliated entities.

2. On or about January 9, 2015 the Company’s legal counsel spoke with Ms. Michele Beck the Director of the Office about the status of the Data Request. At that time the Company said that there was a possible problem regarding the release of the correspondence. The parties discussed, among other things, the possibility of narrowing the scope of the Data Request to facilitate the release of the documents.

3. There were three further discussions of the Data Request including informal talks during the week of January 20, 2015 and telephone calls on January 28, 2015 and the first week in February but the issue was not resolved.

4. On February 10, 2015 legal counsel for the Office sent an e-mail to Yvonne Hogle, Company legal counsel, seeking confirmation of the status of the Data Request and seeking an explanation for the basis of the Company’s refusal to comply should that be the Company’s decision. In a subsequent telephone call Ms. Hogle confirmed that the Company would not provide the requested documents to the Office because the requested material was subject to the terms of the Company’s confidentiality agreement with the UMWA which states

---

<sup>4</sup> Utah Rules of Civil Procedure 37(a)(3)

that the requested documents cannot be released without UMWA consent and that the UMWA would not provide such consent.

Ms. Hogle further stated that she had discussed with UMWA representatives the contents R746-100-16 and the extensive protections for confidential material provided therein but that despite these assurances the UMWA would not authorize the Company to release the documents.

**B. The Office request is proportional and consistent with Utah Rules of Civil Procedure 26(b)(2).**<sup>5</sup>

The UMWA costs comprise more than one-third of the total costs for which the Company is seeking approval in its Application. The issues of the UMWA negotiations and resolution of

---

<sup>5</sup> URCP 26(b)(2) *Proportionality*. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) The party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

the costs associated with settlement of the pension fund and the retiree medical obligations are key components of the Company's Voluntary Request. Access to the requested materials is necessary to enable the Office to carry out its statutory responsibility to evaluate the impact of the Company's application and whether the actions are in the best interest of the customers represented by the Office. The requested materials are within the custody and control of the Company and producing them should not create any undue burden on the Company. Finally, it is the Office's position that, but for the alleged confidentiality agreement between the Company and UMWA, such materials would be routinely provided by the Company in dockets such as this.

**C. The Public Service Commission has jurisdiction over this matter.**

This docket is governed by Utah Administrative Code R746-440, Voluntary Resource Decision. R746-440-1(3) expressly grants the Commission authority over question regarding access to "materials of a confidential or proprietary nature."<sup>6</sup> This Motion to Compel falls squarely within the scope of this rule.

For the foregoing reasons the Office requests that the Commission issue an Order requiring Rocky Mountain Power to fully and completely respond to the data request that is the subject of this Motion.

---

<sup>6</sup> R746-440-1-(3) " Issues regarding the production, treatment and use of a confidential or proprietary nature, including issues regarding who is entitled to review the materials, will be decided by the Commission."

Dated this 13<sup>th</sup> day of February, 2015.

SEAN D. REYES

---

Rex W. Olsen  
Assistant Attorney General  
Office of Consumer Services

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of February, 2015, a true copy of the foregoing document was sent via email to the following:

David L. Taylor  
Yvonne R. Hogle  
R. Jeff Richards  
Rocky Mountain Power  
201 South Main Street, Suite 2300  
Salt Lake City, UT 84111  
[dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com)  
[yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com)  
[jeff.richards@pacificorp.com](mailto:jeff.richards@pacificorp.com)

Gregory B. Monson  
D. Matthew Moscon  
Stoel Rives LLP  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111  
[greg.monson@stoel.com](mailto:greg.monson@stoel.com)  
[matt.moscon@stoel.com](mailto:matt.moscon@stoel.com)

Patricia Schmid  
Justin Jetter  
Assistant Attorneys General  
Heber Wells Building, 4<sup>th</sup> Floor  
160 East 300 South

Chris Parker  
William Powell  
Dennis Miller  
Division of Public Utilities  
Heber Wells Building, 4<sup>th</sup> Floor

Salt Lake City, UT 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)  
[jjetter@utah.gov](mailto:jjetter@utah.gov)

Nancy Kelly  
Western Resources Advocates  
9463 N. Swallow Rd.  
Pocatello, ID 83201  
[nancy.kelly@westernresources.org](mailto:nancy.kelly@westernresources.org)

Gary A. Dodge  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
[gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

160 East 300 South, 4th Floor  
Salt Lake City, UT 84111  
[wpowell@utah.gov](mailto:wpowell@utah.gov)  
[dennismiller@utah.gov](mailto:dennismiller@utah.gov)  
[chrisparker@utah.gov](mailto:chrisparker@utah.gov)

Donna Ramas  
Ramas Regulatory Consulting, LLC  
4654 Driftwood Drive  
Commerce Township, MI 48382  
[donnaramas@aol.com](mailto:donnaramas@aol.com)

/s/ Stacey K. Calvin  
Legal Secretary