

1 **Witness Identification, Qualifications and Purpose of Testimony**

2 **Q. Please state your name, business address and present position with**
3 **PacifiCorp dba Rocky Mountain Power (“the Company”).**

4 A. My name is Loren P. (“Lucky”) Morse. My business address is 70 North 200 East,
5 American Fork, Utah 84003. My present position is Director, Customer and
6 Community Management for the Company.

7 **Q. Please briefly describe your education and business experience.**

8 A. I have a Bachelor of Science Degree in Mechanical Engineering from Brigham
9 Young University and a Masters of Business Administration Degree from the
10 University of Utah. I have also participated in various educational, professional and
11 electric industry related training during my career.

12 I have been employed with PacifiCorp and its predecessor, Utah Power &
13 Light Company (“UP&L”), since 1984. I started my employment in the engineering
14 department and have held various customer account management, district
15 management and community relations positions since that time. I assumed my
16 current position in 2007. In that position, I am responsible for directing the work of
17 a team of customer account and community management employees in Utah and
18 Idaho as well as responsibility for economic development activities for Rocky
19 Mountain Power. As the former district manager for the Moab/Blanding area and
20 as director of customer and community relations, I was integrally involved in the
21 negotiations with the Navajo Tribal Utility Authority (“NTUA”) that gave rise to
22 this Application.

23 **Q. Have you previously testified before the Public Service Commission of Utah**
24 **(“Commission”)?**

25 A. Yes. I provided testimony to the Commission in Docket No. 15-035-61.

26 **Q. Is the Company filing other testimony in support of the Application?**

27 A. Yes. In addition to my testimony, the Company is filing the testimony of Paul H.
28 Clements, Director, Commercial Services for the Company, who will describe the
29 Power Supply Agreement (“PSA”) between the parties, Steven R. McDougal,
30 Director of Revenue Requirement, who will describe the proposed regulatory
31 treatment of the transaction, and Walter W. Haase, General Manager of NTUA,
32 who will describe the benefits of the transaction from the perspective of NTUA and
33 the Navajo Nation.

34 **Q. What is the purpose of your testimony in this proceeding?**

35 A. The purpose of my testimony is to support approval by the Commission of the
36 Application for Approval of Purchase and Transfer Agreement and Power Supply
37 Agreement and Amendment of Certificate of Public Convenience and Necessity
38 (“Application”) filed with this testimony. The focus of my testimony is the
39 Company’s service to customers located within the portion of the Navajo Nation in
40 San Juan County, Utah, and the terms and conditions of the Purchase and Transfer
41 Agreement (“PTA”) entered into between the Company and NTUA and
42 amendment of the Company’s Certificate of Public Convenience and Necessity
43 No. 1118 (“Certificate”) to remove the geographic area in San Juan County that lies
44 within the Navajo Nation and in which NTUA has agreed to be responsible to
45 provide service (known in the PTA as the “NTUA Assumed Service Territory”). A

46 copy of the PTA is provided as Confidential Exhibit RMP____(LPM-1) to my
47 testimony. A copy of the First Amendment to the Purchase and Transfer Agreement
48 (“First Amendment to PTA”) is provided as Confidential Exhibit RMP____(LPM-
49 2) to my testimony. A copy of the Second Amendment to the Purchase and Transfer
50 Agreement (“Second Amendment to PTA”) is provided as Confidential Exhibit
51 RMP____(LPM-3) to my testimony. A copy of the First Amendment to the Power
52 Supply Agreement (“Amendment to PSA”) is provided as Confidential Exhibit
53 RMP____(LPM-4) to my testimony. The NTUA Assumed Service Territory is
54 described in the PTA, and an illustrative map of the NTUA Assumed Service
55 Territory is provided as Exhibit RMP____(LPM-5) to my testimony.

56 **Summary of Testimony**

57 **Q. Please summarize your testimony.**

58 A. The Company, and its predecessor, UP&L, have been providing service to
59 customers within the portion of the Navajo Nation located within San Juan County,
60 Utah, for many years. In order to obtain easements from the Nation to provide
61 service following the creation of NTUA, UP&L entered into a letter agreement with
62 the Navajo Nation Council in 1959 (“Letter Agreement”). A copy of the Letter
63 Agreement is Exhibit D to the PTA. Pursuant to the Letter Agreement, the Nation
64 has an option to purchase certain facilities of the Company serving customers
65 within the Nation [REDACTED] and to negotiate to purchase other facilities
66 of the Company.

67 As explained more fully in Mr. Haase’s testimony, NTUA is an enterprise
68 of the Nation that is authorized to provide public utility services to customers within

69 the Nation. NTUA has had discussions with the Company several times regarding
70 acquisition of the Company's facilities within the Nation pursuant to the Letter
71 Agreement. None of these approaches resulted in NTUA's acquisition of any
72 Company facilities, in part due to disagreements between the Company and NTUA
73 regarding interpretation and application of the Letter Agreement.

74 In 2009, NTUA again commenced discussions with the Company regarding
75 acquisition of the Company's facilities within the Nation. The parties pursued
76 discussions and negotiations in good faith, addressing and ultimately resolving a
77 number of difficult issues. On December 4, 2013, the parties entered into the PTA
78 and PSA, subject to approval of the Navajo Nation Council and the Commission
79 and other necessary approvals. The agreements represent a difficult and delicate
80 compromise and balancing process and should be viewed together and in their
81 entirety.

82 While NTUA was in the process of obtaining a resolution from the Council
83 required for the parties to proceed with the transaction, the parties entered into the
84 First Amendment to PTA dated March 4, 2015, to accommodate a clarifying change
85 in the resolution being sought from the Council.

86 On May 19, 2015, the Council adopted a resolution in substantially the form
87 of the resolution attached to the First Amendment to PTA. The resolution as
88 adopted ("Resolution") was certified on May 27, 2015. A copy of the Resolution is
89 provided as Confidential Exhibit RMP____(WWH-1) to Mr. Haase's testimony.

90 As a result of a number of factors and circumstances, the planned schedule
91 for seeking approval of the transaction, closing of the PTA and completion of the

92 Separation Plan, which is Exhibit J to the PTA, needed to be modified. The parties
93 entered into the Second Amendment to PTA dated December 2, 2015, to modify
94 the dates by which the parties must take certain actions and to update the Separation
95 Plan. The Second Amendment to PTA also clarifies how service to customers
96 outside the Nation that the parties agree would currently be better served by NTUA
97 will be handled. The Second Amendment to PTA also clarifies an NTUA option
98 provided in the PTA.

99 Approval of the Application is in the public interest. Transfer of facilities
100 and service within the Nation to NTUA will allow service to be provided in
101 accordance with the sovereignty, policies and wishes of the Nation to more
102 residents of the Nation more promptly and economically. Over time, it should
103 reduce the cost of service for the Company's other customers in Utah because the
104 Nation is a higher-than-average-cost area to serve. Transition of service to
105 customers will take place in an orderly manner with protections to customers. The
106 PSA will provide benefits to customers within the Nation and to the Company's
107 other customers. The largest customer of Rocky Mountain Power within the Nation,
108 Resolute Natural Resources Company, LLC ("Resolute"), will have the opportunity
109 to continue to receive service from the Company for the balance of the term of its
110 Master Electric Service Agreements ("MESAs") and can reasonably expect to
111 continue to receive reliable service at rates below those that would be charged if
112 the Company continued to provide service after transferring facilities to NTUA.
113 The Letter Agreement will be satisfied without the necessity of litigation,
114 presumably in Navajo Tribal Courts, regarding its interpretation and application,

115 and the Company will retain its 345 kV transmission line and associated easement
116 located within the Nation.

117 **Background**

118 **Q. Please briefly describe the Company's service to customers within the**
119 **Nation.**

120 A. The Company, and its predecessor, UP&L, have provided service to customers
121 within the portion of the Nation in San Juan County, Utah, for many years. This
122 service was provided with the consent of the Nation and pursuant to the Company's
123 tariffs and regulations reviewed and approved by the Commission and pursuant to
124 the Certificate. The Company was required to obtain easements from the Nation for
125 its facilities within the jurisdictional boundaries of the Nation.

126 With the exception of service to the operator of the Aneth Oil Field,
127 currently operated by Resolute, customers have generally been residential and
128 small commercial customers in relatively small clusters, spread out over large
129 geographical areas. The line extension charges for extending service to new
130 customers have been beyond the means of many individual customers. In some
131 cases, the line extension charges have been satisfied through grants from the
132 Nation, which must be obtained through a lengthy and complex process. As a result,
133 the percentage of Navajo Nation residents without electricity is relatively high.

134 Currently the Company provides service to 1,045 customers located within
135 the Nation utilizing 29.79 miles of transmission lines, 335 miles of distribution lines
136 and four substations. In 2014, the total load of these customers was 40.86
137 megawatts and their total consumption of electricity was 286,235 megawatt hours,

138 with Resolute accounting for the substantial majority of the load and energy
139 consumption.

140 **Q. Has the Nation previously sought to acquire the Company's assets pursuant**
141 **to the Letter Agreement?**

142 A. Yes. In 1973, 1981 and 1989, NTUA approached UP&L regarding acquiring the
143 facilities of UP&L used to provide service to customers within the Nation pursuant
144 to the terms of the Letter Agreement. None of these approaches resulted in NTUA's
145 acquisition of any UP&L facilities. However, they disclosed potential
146 disagreements between the Company and NTUA regarding interpretation and
147 application of the Letter Agreement. In any event, UP&L, and subsequently Rocky
148 Mountain Power, have continued to provide electric service to customers within the
149 Nation with the consent of the Nation and in accordance with the terms and
150 conditions of their tariffs, schedules and regulations on file with and approved by
151 the Commission.

152 **Q. Has the Company experienced difficulties in providing service to new**
153 **customers within the Nation?**

154 A. Yes. Providing service to new customers in the Nation can be difficult and time
155 consuming. This is primarily due to the difficulty in receiving permits from the
156 Nation to construct the electrical facilities and in obtaining necessary funds for the
157 customer's share of costs beyond the allowance for the facilities. Obtaining funds
158 requires an expensive and time consuming process that begins with surveying the
159 line route, conducting threatened species and environmental and cultural impact
160 studies and adjusting line routing if necessary to avoid any impact to the area.

161 Additionally, there are requirements to obtain approval from any individuals with
162 grazing or land rights over the area where the line will be placed. Obtaining funds
163 to construct the lines requires requesting grants from the Navajo Nation Community
164 Development Block Grant program or the Utah Navajo Trust Fund. These
165 organizations require all necessary permits to be obtained prior to approving funds
166 for construction and, if funds are not available, the projects will have to wait for a
167 future funding cycle to secure funds for construction. Once approved, there are a
168 number of additional reporting, tracking and billing processes that have to be
169 followed to meet funding requirements. In many instances, residents requesting
170 electrical service are collected and bundled into larger projects to make this process
171 more efficient than processing individual applications for service. This results in
172 added time for residents to receive electrical service which is often frustrating for
173 those requesting electrical service, but necessary due to the requirements of the
174 Nation to construct electrical facilities.

175 **Description of PTA**

176 **Q. Please describe the principal terms of the PTA.**

177 A. The PTA provides that NTUA will acquire the facilities and customers of the
178 Company within the Nation assuming the Company and NTUA receive all
179 necessary approvals to proceed with the transaction.

180 **Q. What is the purchase price for the facilities Rocky Mountain Power will**
181 **transfer to NTUA?**

182 A. As required by the Letter Agreement at least with respect to certain distribution
183 assets, the purchase price is [REDACTED]

184

[REDACTED]

185

[REDACTED]. The Company has not undertaken the extensive process to conduct an

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updated inventory of the facilities. However, one will be conducted in connection

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with the transfers of facilities contemplated by the PTA.

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Q. Has NTUA agreed to reimburse the Company for costs associated with the

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transaction?

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A. Yes. NTUA has agreed in the PTA to reimburse the Company for its expenses

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incurred in undertaking the transaction, including its costs in inventorying the

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facilities and easements and performing studies related to the transition of service,

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its transaction costs, including legal fees and other costs associated with

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applications for regulatory approvals [REDACTED], costs incurred in

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separating the Company's facilities from NTUA's facilities, and any costs required

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to upgrade the Company's facilities to meet the standards of the Rural Utilities

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Service of the United States Department of Agriculture ("RUS"), which will

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provide financing for NTUA's acquisition of the Company's facilities. NTUA has

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also agreed to include in the purchase price a pro-rated share of property taxes to

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be paid by the Company and any tax effects of the transaction and to pay any

REDACTED – PUBLIC VERSION

201

transfer fees associated with the transaction.

202

Q. Does the Company have any potential offsets associated with the

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transaction?

204

A. Yes. [REDACTED]

205

[REDACTED]

206

[REDACTED]

207 [REDACTED]
208 [REDACTED]
209 [REDACTED]
210 [REDACTED]
211 [REDACTED]
212 [REDACTED]
213 [REDACTED]
214 [REDACTED]
215 [REDACTED]
216 [REDACTED]
217 [REDACTED].
218 [REDACTED]
219 [REDACTED]
220 [REDACTED]
221 [REDACTED].

222 **Q. How will the sale of facilities and transfer of customers take place under the**
223 **PTA?** REDACTED – PUBLIC VERSION

224 A. To accommodate continued service to Resolute by the Company through the
225 expiration of its MESAs, the sale of facilities and transfer of customers is planned
226 to take place in up to three steps depending on when the first closing occurs in
227 relation to Resolute’s completion of a transmission line and related facilities
228 enabling it to receive power from the Company at Resolute’s Aneth, McElmo and
229 Ratherford Substations and the expiration of the Company’s MESAs with

230 Resolute. In the first step referred to in the PTA as the Closing, which will occur
231 prior to or at expiration of the MESAs, the Company will transfer facilities and
232 related easements and rights of way to NTUA that are not used in providing
233 service to Resolute as well as the customers served from the transferred facilities.
234 In the second step referred to in the PTA as the Interim Changeover, which will
235 also occur prior to or at expiration of the MESAs, the Company will transfer the
236 facilities and related easements and rights of way currently used to serve Resolute
237 (known in the PTA as the “Resolute Facilities”) as well as the customers served
238 from those facilities (known in the PTA as the “Resolute Facilities Customers”)
239 to NTUA when Resolute completes its transmission line and related facilities
240 enabling it to receive power from the Company at the Resolute’s McElmo and
241 Ratherford Substations. In the third step referred to in the PTA as the Resolute
242 Changeover, the Company will transfer any remaining facilities used to serve
243 Resolute and other customers served off of Resolute’s transmission line and the
244 customers served from those facilities (known in the PTA as the “Resolute
245 Customers”) to NTUA at expiration of the Company’s MESAs with Resolute.

246 [REDACTED]
247 [REDACTED] REDACTED - PUBLIC VERSION [REDACTED]
248 [REDACTED]
249 [REDACTED].

- 250 **Q. Is it possible that the transaction could take place in less than three steps?**
251 A. Yes. If Resolute completes construction of its transmission line prior to Closing,
252 the first and second steps would be combined at Closing. If the MESAs expire [REDACTED]

253 [REDACTED] prior to Closing, all three steps would take
254 place at Closing. If Resolute has not completed its transmission line and related
255 facilities prior to expiration of the MESAs, the Interim Changeover and the
256 Resolute Changeover could be combined into a single event.

257 **Q. What is the status of Resolute's completion of its transmission line and**
258 **related facilities?**

259 A. Resolute has completed construction of a 138/69 kV substation and constructed a
260 69 kV line to its Aneth substation. Resolute is completing permit acquisition and
261 engineering and all work necessary to construct the 69 kV line to its McElmo and
262 Ratherford Substations and to construct the Ratherford Substation.

263 **Q. When do the MESAs expire?**

264 A. The MESAs expire at 12:01 am (Mountain Time) on June 29, 2017. Therefore, it
265 is likely that the Closing will take place before their expiration.

266 **Q. Does the PTA contemplate that Rocky Mountain Power will retain service**
267 **to any customers located within the Nation beyond the Resolute**
268 **Changeover?**

269 A. No. Although Resolute intends to complete facilities that would enable it to take
270 service directly from the Company outside the Nation for use within the Nation, the
271 Company has agreed in the PTA that it will not provide service to any customer for
272 electric power to be used within the Nation following completion of the transaction.
273 To facilitate this agreement, the Company has agreed to allow NTUA to install
274 metering between the Company's metering and Resolute's 138/69 kV substation
275 prior to the Resolute Changeover.

276 **Q. Does the PTA contemplate that the Company will retain any facilities and**
277 **easements located within the Nation?**

278 A. Yes. the Company has a 345 kV transmission line from the Pinto Substation in
279 Monticello, Utah to the Four Corners Substation in New Mexico near the point at
280 which the borders of Arizona, Colorado, New Mexico and Utah intersect. A portion
281 of this line and a related easement are located within the Nation. This line does not
282 directly provide service to customers within the Nation. The PTA provides that
283 Rocky Mountain Power will retain this line and the associated easement.

284 **Q. Will the Commission retain jurisdiction over NTUA's service to the**
285 **customers within the Nation that are transferred to NTUA?**

286 A. No. As an enterprise of the Navajo Nation, NTUA has a status similar to that of a
287 municipal power system providing service to customers within a municipality in
288 the state of Utah. However, that status is somewhat enhanced because the Navajo
289 Nation, unlike a municipality, is not a political subdivision of the state, but is a
290 sovereign nation within the United States.

291 **Q. Nonetheless, does the Commission have any assurance that customers within**
292 **the Nation will be treated in a just and reasonable manner after service is**
293 **transferred to NTUA?**

294 A. Yes. The Council has authorized NTUA to charge smaller customers rates
295 comparable to those that would have been charged by the Company for a reasonable
296 transition period, until such time as NTUA adopts new rates in accordance with its
297 regulatory authority under Navajo law, and to negotiate rates to be paid by large
298 users.

299 **Q. Does the PTA contemplate that any customers not located within the Nation**
300 **will be transferred to NTUA?**

301 A. Yes. Fourteen customers located on lands adjacent to the Nation are served through
302 facilities on the Nation that will be transferred to NTUA as part of the transaction.
303 It is impractical at this time for the Company to install completely separate facilities
304 to serve these customers. If the Company were to install meters and limited
305 facilities to serve these customers, it would be required to make arrangements with
306 NTUA to wheel power to those facilities. Service to the customers would require
307 ongoing coordination between the Company and NTUA and service interruptions
308 could result in confusion to customers because they might result from problems of
309 either NTUA or the Company. Therefore, subject to approval of the Commission,
310 these customers will be transferred to NTUA.

311 **Q. Will the Commission regulate NTUA's service to these customers?**

312 A. No. The Resolution permits NTUA to serve these customers. NTUA's service to
313 ^{REDACTED – PUBLIC VERSION}
314 these customers will be similar to the service provided by various municipal
315 power systems to customers located outside their municipal boundaries.

315 **Q. Does the PTA provide any protections to assure that the service to these**
316 **customers will be just and reasonable?**

317 A. Yes. NTUA agrees in Section 2.5.6 of the PTA that it will charge these customers
318 the same rates, including refunds or rebates, and provide service to these customers
319 on the same terms and conditions as it provides service to similarly situated
320 customers within the Nation. It also agrees to have a reasonable mechanism for

321 these customers to resolve disputes with NTUA regarding their service from
322 NTUA.

323 **Q. Is it possible that service to the customers located outside the Nation will be**
324 **transferred back to the Company in the future?**

325 A. Yes. In the Second Amendment to PTA, NTUA agrees that in the event the
326 Company is able to provide service directly to these customers in the future, NTUA
327 will transfer the customers back to the Company. If the Company installs facilities
328 to serve these customers, NTUA will be required to transfer the customers to the
329 Company within six months and upon payment by the Company of
330 [REDACTED] for NTUA's facilities
331 dedicated to service to the customers. The transfer will be in accordance with good
332 utility practices and will minimize disruption of service to the customers. NTUA
333 will be obligated to continue to serve the customers until their service is transferred
334 to the Company. REDACTED – PUBLIC VERSION

335 **Q. The PTA also refers to [REDACTED] potential payments from the Company**
336 **to NTUA [REDACTED].**
337 **Please explain.**

338 A. The Company and its customers will receive a benefit from the Company's
339 continued service to Resolute during the term of the MESAs and the Company's
340 continued provision of power to NTUA to serve the transferred customers under
341 the PSA following completion of the transaction. [REDACTED]

342 [REDACTED]
343 [REDACTED]

344

[REDACTED]

345

[REDACTED]

346

[REDACTED]

347

[REDACTED]

348

[REDACTED]

349

[REDACTED]

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[REDACTED]

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[REDACTED]

352

[REDACTED]

353

[REDACTED]

354

[REDACTED]

355

[REDACTED]

356

[REDACTED].

357 **Q. Are there other provisions of the PTA that you wish to mention?**

358 A. Yes. Without reviewing all of the terms and conditions of the PTA, there are a few
359 other provisions that I wish to call to the attention of the Commission.

360 First, in the PTA and the NTUA Management Board Resolution, NTUA has
361 granted a limited waiver of sovereign immunity with respect to the transaction and
362 has agreed to binding arbitration of any dispute with judicial enforcement of any
363 arbitration decision in federal or state courts in Utah in accordance with the terms
364 of the PTA. This is significant because absent this waiver and agreement, it is
365 NTUA's position that any dispute between the Company and NTUA under the PTA
366 can only be resolved in an action commenced by NTUA. Presumably, NTUA
367 would commence such an action in the Navajo Tribal Courts.

368 Second, except with respect to the potential for credits previously
369 mentioned, NTUA has agreed to purchase Rocky Mountain Power's facilities as is
370 and where is and to assume any liabilities associated with them. [REDACTED]

371 [REDACTED]
372 [REDACTED].

373 Third, NTUA has made a substantial payment on execution of the PTA and
374 will make another payment upon receipt of the Commission's order approving the
375 transaction. These payments are intended to commit NTUA to completing the
376 transaction. If the transaction does not close because of defaults of NTUA on
377 matters within its control, the Company is entitled to retain all or a portion of these
378 payments.

379 Fourth, NTUA has agreed that the transaction fully satisfies the Letter

380 Agreement and that the Company will retain ownership and use of the 345 kV
381 transmission line and associated easement. The Council has acknowledged these
382 principles in the Resolution.

383 Fifth, as discussed in more detail in the testimony of Mr. McDougal,
384 significant conditions precedent to consummation of the transaction are approval
385 by the Commission of recovery by the Company in rates of any [REDACTED]
386 [REDACTED] and treatment of the sale of
387 power to NTUA under the PSA as a Utah situs transaction. These conditions assure
388 that the Company is not penalized by failure to receive recovery in rates of the
389 [REDACTED] payments which are part of the overall consideration for a transaction
390 that is prudent and in the public interest and to assure that the transaction does not
391 alter ratemaking treatment of service to customers within the Nation among the
392 Company's jurisdictions during the term of the PSA.

393 Finally, the transaction is dependent on the Commission modifying the
394 Company's service territory to remove the portions of the Nation within the state
395 of Utah. As previously mentioned, NTUA has agreed to be responsible to provide
396 electric service to customers within the Nation.

397 **Description of PSA**

398 **Q. Please briefly describe the PSA.**

399 A. The PSA provides that the Company will provide a firm supply of power to NTUA
400 sufficient to serve the customers being transferred from the Company to NTUA
401 under the PTA on terms essentially equivalent to Schedule 9 of Rocky Mountain
402 Power's Utah tariff for a period of 10 years commencing on the Changeover Date

403 as provided in the PSA. Mr. Clements will describe the PSA in more detail in his
404 testimony.

405 **Q. Why is the PSA part of the transaction?**

406 A. NTUA wanted some assurance that it would have power available to serve the
407 customers, and particularly Resolute, at prices consistent with the prices the
408 Company was providing service to the customers. The Company recognized that
409 continued service to Resolute during the term of the MESAs and continued
410 provision of power to NTUA at Schedule 9 equivalent rates for a period of time
411 would provide a significant benefit to the Company's other customers.

412 The PSA was negotiated to provide a mutual benefit to the parties and to
413 their customers, including the customers being transferred to NTUA under the PTA.

414 **First Amendment to PTA**

415 **Q. Please describe the First Amendment to PTA.**

416 A. As explained in the testimony of Mr. Haase, in the process of seeking approval of
417 the Navajo Nation Council to the transaction, it became apparent that the Council's
418 specific approval of the PTA and PSA was not necessary to assure that they would
419 be binding agreements and particularly that NTUA's limited waiver of sovereign
420 immunity and agreement to participate in binding arbitration would be binding on
421 NTUA. The Council had previously granted authority to the NTUA Management
422 Board to grant waivers of sovereign immunity and agree to binding arbitration
423 effective 30 days after providing written notice to the Speaker of the Council. *See*
424 Navajo Nation Council Resolution No. CAP-18-10, which is Exhibit
425 RMP___(WWH-2) to Mr. Haase's testimony. The Resolution of the Management

426 Board, Exhibit L to the PTA, already satisfied that requirement without the
427 necessity of the Council including its approval of the PTA and PSA in the Council
428 Resolution. Thus, the parties entered into the First Amendment to PTA dated March
429 4, 2015.

430 In addition to providing a substitute proposed resolution in place of the
431 proposed resolution attached as Exhibit K to the PTA, the Amendment makes
432 conforming amendments to provisions of the PTA referring to the approval of the
433 Council through the Resolution. The Amendment to PSA dated March 4, 2015, was
434 also executed by the parties making conforming amendments to provisions of the
435 PSA.

436 **Q. Did the NTUA Management Board submit the written notice of its waiver of**
437 **sovereign immunity to the Speaker of the Council as required by Navajo**
438 **law?**

439 A. Yes. As explained in the testimony of Mr. Haase, the written notice was provided
440 to the Speaker on September 11, 2013, and, thus, was effective on October 11,
441 2013.

442 **Resolution**

443 **Q. Has the Council issued a resolution approving the transaction?**

444 A. Yes. On May 19, 2015, the Council adopted a resolution in substantially the form
445 of the resolution attached to the First Amendment to PTA. The Resolution as
446 adopted as certified on May 27, 2015. A copy of the Resolution is provided as
447 REDACTED – PUBLIC VERSION
Confidential Exhibit RMP___(WWH-1) to Mr. Haase’s testimony.

448 **Q. Please describe principal aspects of the Resolution.**

449 A. In the Resolution, the Council acknowledges that, upon completion of the
450 transaction, the PTA and PSA fully satisfy the Letter Agreement and that the
451 Company will retain ownership and use of the 345 kV transmission line and
452 associated easement. The Resolution also releases the Company of any liability
453 with regard to the transferred easements, [REDACTED]
454 [REDACTED] subject to the Company transferring all of its
455 interests in and claims with regard to the transferred easements to NTUA.

456 **Second Amendment to PTA**

457 **Q. Please describe the Second Amendment to PTA.**

458 A. As a result of a number of factors and circumstances, the planned schedule for
459 seeking approval of the transaction, closing of the PTA and completion of the
460 Separation Plan needed to be modified. The parties executed the Second
461 Amendment to PTA dated December 2, 2015. The Second Amendment to PTA
462 modifies the dates by which the parties must take certain actions.

463 The Second Amendment to PTA also clarifies how service to customers
464 outside the Nation that the parties agree would currently be better served by NTUA
465 will be handled. These provisions are similar to provisions in Utah law with regard
466 to service by municipal power systems to customers located outside their
467 jurisdictional boundaries. For example, the Second Amendment to PTA provides
468 that if the Company is able to serve the fourteen transferred customers located
469 outside the Reservation from its separate facilities in the future, the customers will
470 be transferred by NTUA to the Company. It also provides that if additional
471 customers located outside the Reservation request service from NTUA in the future

472 and if NTUA is willing to serve them, they may be served by NTUA if the Company
473 consents and if the Commission approves service by NTUA. Service to these
474 customers would also be transferred back to Rocky Mountain Power by NTUA if
475 the Company eventually installs facilities to serve them directly.

476 **Public Interest**

477 **Q. Is approval of the Application in the public interest?**

478 A. Approval of the Application is in the public interest for several reasons:

479 First, the agreements allow NTUA to provide service to customers within
480 the Nation in accordance with the policies and wishes of the Nation. Because
481 NTUA is an enterprise of the Nation, it is anticipated that it will be able to provide
482 service to more residents of the Nation more promptly and economically than the
483 Company could because of the lengthy and expensive process required for the
484 Company to obtain easements, permits and grants from the Nation and the
485 requirement that it comply with regulations of both the Nation and the Commission,
486 including the line extension policies in the Company's Utah tariff which have
487 prevented or delayed many customers within the Nation from receiving electric
488 service.

489 Second, the PTA provides that service to the customers of the Company will
490 be transitioned to NTUA in an orderly manner without significant disruption.
491 NTUA has also agreed to allow customers to continue to be charged rates
492 commensurate with those that would be charged by the Company for a reasonable
493 transition period until such time as NTUA adopts new rates in accordance with its
494 regulatory authority under Navajo law.

495 Third, the largest customer of the Company within the Nation, Resolute, has
496 the opportunity to continue to receive service from Rocky Mountain Power for the
497 balance of the term of its MESAs.

498 Fourth, the PSA assures that the Company's customers within the Nation,
499 including Resolute, will have the opportunity to have a reasonably priced power
500 supply for many years. It also provides a benefit to the Company and its other
501 customers by allowing the Company to retain the load that has partially justified its
502 investment in facilities outside of the Nation in the area for a reasonable period of
503 time.

504 Fifth, through consummation of the transaction, the Letter Agreement will
505 be satisfied without the necessity of litigation regarding its interpretation and
506 application. It is the position of the Nation that this litigation and enforcement of
507 the Letter Agreement could only be initiated by the Nation, which would
508 presumably be filed in Navajo Tribal Courts.

509 Sixth, the Company retains the 345 kV line and associated easement located
510 within the Nation.

511 **Conclusion**

512 **Q. What do you conclude?**

513 A. The PTA and PSA are the product of extensive and difficult negotiations between
514 the Company and NTUA. They represent a carefully balanced and delicate
515 compromise of complex issues and must be viewed together and in their entirety.
516 Approval of the PTA and PSA is in the public interest for the reasons stated above.

517 **Q. What do you recommend?**

518 A. The Company recommends that the Commission grant the Application, approving
519 the PTA and the PSA and finding them prudent and amending Rocky Mountain
520 Power's Certificate to remove the NTUA Assumed Service Territory.

521 **Q. Does this conclude your direct testimony?**

522 A. Yes.