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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<p><b>In the Matter of the Application of Rocky Mountain Power for Approval of Purchase and Transfer Agreement and Power Supply Agreement with Navajo Tribal Utility Authority and Amendment of Certificate of Public Convenience and Necessity</b></p>	<p><b>Docket No. 15-035-84</b></p> <p><b>NAVAJO TRIBAL UTILITY AUTHORITY'S RESPONSE TO RESOLUTE'S MOTION FOR AN ADDITIONAL PUBLIC WITNESS HEARING</b></p>
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The Navajo Tribal Utility Authority (“NTUA”) hereby responds and objects to the “Request for Public Witness Day On or Near the Areas Affected by Application” (“Motion”) filed herein by Resolute Natural Resources Company, LLC (“Resolute”) on February 11, 2016. NTUA respectfully submits that the Motion is untimely, having been filed with the Commission more than twelve days after the deadline set in the Commission’s January 12, 2016, Scheduling Order for parties to provide input on whether a second public witness hearing should be scheduled. (Scheduling Order at 5). For that reason alone, it should be denied.

In addition, claims made in the Motion and in purported resolutions (“Resolutions”) from two Chapters of the Navajo Nation filed by Resolute with its Motion, are inaccurate, misleading,

unsubstantiated and untrue. More importantly, they attempt to raise issues that are not properly before the Commission in this docket.

NTUA has no objections to the Commission holding a properly focused public witness hearing on the Utah portion of the Navajo Nation if the Commission determines that such a hearing would be beneficial to it. NTUA fears, however, that the Motion and Resolutions are in furtherance of misguided attempts to spread false information, suggest false options and frighten people, and that a public witness hearing would be of limited value. If a local public hearing is scheduled, NTUA respectfully submits that relevant issues before the Commission in this docket should be clearly explained to avoid undue public angst or wasted time or resources.

**I. A local public hearing should not focus on procedures or decisions of the Navajo Nation or on purportedly choosing the best electric supplier for the Navajo Nation.**

The timing and substance of the two Resolutions, and the similarity of those Resolutions to Resolute arguments that have repeatedly been advanced and rejected, suggest that the Resolutions were instigated as part of a stratagem for further delay. Using similar language, both Resolutions parrot Resolute's false and misleading claims that NTUA is unregulated, that rates will arbitrarily increase and reliability will decrease under NTUA, and that RMP can or should continue to provide electrical service within the Navajo Nation. These claims are inaccurate and, perhaps more importantly, suggest a false option: that this Commission can choose between RMP and NTUA as the future supplier of electrical services within the Utah portion of the Navajo Nation.

The sovereign Navajo Nation, through its duly elected Tribal Counsel, has sole authority to determine who will provide utility services within its boundaries. That decision has been

made: NTUA will provide electric services. This decision cannot be challenged or re-litigated by Resolute, or by individual Chapters of the Navajo Nation, through this Commission. NTUA respectfully submits that the Commission should reject any suggestion that the Commission can or should review or second-guess decisions that have been made or procedures that have been followed by NTUA or the Tribal Counsel.

The Navajo Nation and NTUA engaged in a year-long review process before the NTUA Board, affected Chapters, Tribal Council Committees and the Tribal Council, after which it was determined that NTUA will provide electric services within the Navajo Nation, and that the terms and conditions contained in the two agreements between RMP and NTUA reflect an acceptable compromise in connection with the exercise of the Navajo Nation's contractual right to acquire RMP facilities located within its borders. Resolute, affected Chapters and other interested parties were notified of and participated in those processes. They had every opportunity to, and did, present their concerns and arguments, which are now being recycled here. Their arguments were considered and rejected by NTUA and the Tribal Council, whose decisions are final and not subject to review by this Commission. If Resolute or anyone else wishes to revisit decisions of the Tribal Counsel, they must do so through applicable Navajo Nation procedures, not through this docket.

NTUA respectfully submits that it would not only be inappropriate, but highly offensive to the Navajo Nation, for anyone to suggest that this Commission can or should undertake a review or analysis of the processes used or decisions reached by NTUA or the Tribal Counsel, or to purport to choose between NTUA and RMP as the preferred supplier of electricity within any portion of the Navajo Nation.

**II. Claims made in the Motion and Resolutions are not only irrelevant, but also inaccurate and false.**

Although most of the claims and concerns raised in the Motion and the Resolutions are not relevant to the issues properly before the Commission, NTUA feels the need to briefly respond to and rebut any claims that NTUA's reliability, prices or services are or will be inferior or not subject to effective oversight.

Reliability will be unaffected by the agreements and transactions between NTUA and RMP ("Transactions"). NTUA has excellent reliability and, in any event, will use the same poles and wires currently used by RMP, as well as RMP as the source of most of the electricity delivered. NTUA fully expects that reliability in the area will increase as a result of the Transactions. Indeed, Resolute has long complained about reliability of its current service and has spent significant amounts of money attempting to solve reliability issues. Under NTUA, reliability will be addressed and improved and available redundancy options will be explored.

Similarly, electric rates will not increase as a result of the Transactions. NTUA has committed to mirror RMP's rates for most transferred customers for an estimated five years or more, and is willing to maintain Resolute's rates consistent with RMP rates for that long or longer if the Transactions are quickly approved and implemented. Over the longer run, NTUA expects its rates to be lower than RMP's rates. Moreover, NTUA's ratemaking and oversight processes are long, rigorous and effective.

Despite unsupported claims to the contrary, the nature and extent of electric supply options available to NTUA are consistent with strong reliability and low costs. NTUA has ample

access to reliable, low-cost hydro, gas-fired and other generation resources, with little exposure to costs and risks of coal-fired generation. Moreover, the power supply agreement negotiated between RMP and NTUA as part of the Transactions ensures continued access to adequate and reasonably priced power supplied by RMP itself. It is incorrect and disingenuous to suggest that the Transactions will lead to lower reliability or higher costs, either in the short run or the longer run.

The Resolutions also mimic Resolute's unsupported claim that the Transactions will negatively impact employment in the Aneth and Red Mesa areas. NTUA fully understands the critical nature of employment on the Navajo Nation; unemployment is high and good jobs are scarce. However, there is neither support nor rational argument for any claim that the Transactions will lead to Resolute's demise or to higher unemployment. To the contrary, rates will remain consistent with RMP's rates for many years and electric infrastructure that has not been added over the past 50 years of RMP service (due to cost considerations and tariff constraints) will be added by NTUA, enhancing both the economic viability of the area and the quality of life of area residents.

As discussed above, this proceeding is not and cannot be a beauty contest designed to select the most attractive supplier of electricity within Utah portions of the Navajo Nation. That decision has been made by the Tribal Counsel. The purpose of this proceeding is for the Commission to determine whether it is in the public interest to approve the negotiated resolution of RMP and NTUA's conflicting claims and issues worked out with great difficulty over several years, as opposed to sending NTUA and RMP to court or another forum for resolution of their

competing claims. While protracted litigation might please those whose primary goal is delay, NTUA respectfully submits that it would hardly serve the broader public interest. NTUA believes that any hearing in this docket, whether in Salt Lake City or on the Navajo Nation, should focus narrowly on information that will help the Commission gather the information that it needs to make this important public policy determination.

**III. If a hearing is held on the Navajo Nation, issues relevant to this proceeding should be identified in order to properly focus public comments.**

It is far from clear to NTUA that requiring the Commission and the Parties, along with their staff, counsel and others, to travel to a hearing on the Utah portion of the Navajo Nation would be useful to the Commission's evaluation of the issues properly before it.<sup>1</sup> Nevertheless, NTUA is happy to extend its hospitality to facilitate a local public hearing if the Commission believes it would be useful. If the Commission elects to conduct such a public hearing, NTUA respectfully suggests that the hearing will be more productive and useful if it is not allowed to devolve into parties rounding up dozens or more of local individuals to support competing positions based on false claims or perceptions of injuries or injustices. NTUA respectfully submits that any public hearing will be more meaningful if the notice clearly explains the nature and purpose of these proceedings, and specifies the issues and results that are and are not within the proper scope of these proceedings.

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<sup>1</sup> The untimely Resolutions, apparently endorsed by 57 individuals within two Utah Chapters of the Navajo Nation based on false and misleading claims, do not suggest to NTUA a sufficient groundswell of opposition to the Transactions or an understanding of the proper scope or nature of this proceeding to warrant the time and expense of a local public hearing. Moreover, both Resolutions authorize intervention by the Chapters in this proceeding, which would seem to make a local public hearing less necessary.

NTUA suggests, for example, that a public hearing notice should explain that RMP's application requests Commission action for the limited purposes of (1) approving the terms of two agreements negotiated by RMP and NTUA to resolve conflicting interests and claims, (2) finding that the Transactions are prudent from the perspective of RMP and the Utah public interest, and (3) amending RMP's Certificate of Public Convenience and Necessity to conform to the negotiated Transactions. The notice should also explain what is not before the Commission, e.g., the process used or decisions reached by NTUA or the Tribal Counsel, whether RMP or NTUA is better positioned to provide cheaper or more reliable electric service, or which utility should or will continue to supply electricity within the Navajo Nation.

Respectfully submitted this 25<sup>th</sup> day of February 2016.

HATCH, JAMES & DODGE

/s/

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Gary A. Dodge  
Attorneys for NTUA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 25<sup>th</sup> day of February 2016, on the following:

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