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March 7, 2024

***VIA ELECTRONIC FILING***

Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Administrator

**RE: Docket No. 24-035-03**  
In the Matter of the Investigation of Rocky Mountain Power's Transfer of Assets  
and Customers to Hurricane City  
*Rocky Mountain Power's Response*

In accordance with the Notice of Investigatory Docket and Request to the Division of Public Utilities to Investigate and Advise issued by the Public Service Commission of Utah ("Commission") on January 11, 2024, Rocky Mountain Power, a division of PacifiCorp ("Rocky Mountain Power" or the "Company") provides these responsive comments to the Division of Public Utilities' comments regarding the Commission's investigation of the transfer of certain Rocky Mountain Power assets and customers to Hurricane City.

The Company respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)  
[utahdockets@pacificorp.com](mailto:utahdockets@pacificorp.com)  
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By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

Informal inquiries may be directed to Jana Saba at (801) 220-2823.

Sincerely,

A handwritten signature in blue ink that reads "Joelle Steward".

Joelle Steward  
Senior Vice President, Regulation and Customer/Community Solutions

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*Attorney for Rocky Mountain Power*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Investigation of Rocky Mountain Power’s Transfer of Assets and Customers to Hurricane City	Docket No. 24-035-03  Rocky Mountain Power’s Response Comments
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**I. Introduction**

1. In accordance with the Notice of Investigatory Docket and Request to the Division of Public Utilities to Investigate and Advise issued by the Public Service Commission of Utah (“Commission”) on January 11, 2024, Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”) provides these responsive comments to the Division of Public Utilities’ comments regarding the Commission’s investigation of the transfer of certain Rocky Mountain Power assets and customers to Hurricane City.

**II. Response Comments**

2. Rocky Mountain Power agrees with the Division’s conclusion that the Company does not appear to have violated any statute in these circumstances, and generally supports all four of the Division’s recommendations. The Division’s recommendations will clarify the Commission’s expectations on these issues going forward, and hopefully avoid future uncertainties like the ones raised with the Company’s transfer of assets to Hurricane City in this

matter. The Company offers the following limited remarks below to inform the Commission’s decision in this investigation.

3. First, Rocky Mountain Power appreciates that the Division noted the apparent ambiguity between Utah Code Ann. § 10-8-14 and § 10-2-421.<sup>1</sup> While the former statute provides baseline requirements that govern a municipality and the Company’s provision of services beyond a municipality’s boundaries, the latter creates an exemption from these requirements when the municipality seeks to serve customers in areas that are “being annexed.” The Company agrees with the Division’s assessment that it is not entirely clear how broadly the term “being annexed” could be applied, and absent a declaratory ruling by the relevant judicial body, the Company believes that it acted in good faith applying Utah Code Ann. § 10-2-421 to the present circumstances—especially given the multiple representations from Hurricane City regarding its intent to annex these areas. The Division’s recommendations that public utilities be required to notify the Commission of changes to its service territory and file a request to change its Certificate of Public Convenience and Necessity (“CPCN”) where appropriate, provides at least one tool to address the lack of clarity in the statute.

4. Second, the Division notes that the Asset Purchase Agreement from the Hurricane Complaint included a provision that it “automatically updates or is terminated if the Commission determines that any provision of the Asset Purchase Agreement is unlawful,” and that this term “contemplated the possibility that some Commission process was necessary.”<sup>2</sup> The Company respectfully disagrees. This term was not included to expressly acknowledge that further Commission process was necessary, but rather it is a standard term that the Company includes in many contracts to reflect the fact that the Commission has plenary powers of Rocky Mountain

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<sup>1</sup> DPU Comments, at 3-6.

<sup>2</sup> *Id.* at 6.

Power's operations and services which could impact any agreement that falls under the Commission's jurisdiction. The Company wants to be clear that it did not contemplate additional Commission process or approval of the Hurricane agreement. Rather, out of an abundance of caution, the Company includes terms like these to ensure that contracting parties, and the contracts entered into by these parties, acknowledge that those agreements have the potential to be impacted by Commission actions.

5. Third, the Division indicated several examples where the Company has either notified or sought Commission approval of prior asset and customer transfers, and these may be instructive for the Commission to consider as they are somewhat analogous situations.<sup>3</sup> The Company agrees with the Division and offers one additional observation. While these cases provide helpful guidance for the policy that the Commission should consider in order to avoid circumstances that gave rise to the Hurricane Complaint, the Company believes they are only persuasive authorities, because none implicated a municipality's rights to serve customers in locations that were in the process of "being annexed" under Utah Code Ann. § 10-2-421.

6. Fourth, the Company would like to share its perspectives on next steps. The Company believes that, if the Commission agrees with the Division's recommendations, it should take a two-prong approach to resolve this proceeding. First, consistent with the Division's first recommendation, the Commission should issue an order that directs Rocky Mountain Power to file a request to amend its CPCN to reflect the Company's updated service territory after the sale of the Hurricane assets. Second, to implement the Division's second, third and fourth recommendations, the Commission should consider initiating a rulemaking proceeding to codify these prospective policies. A rulemaking, as opposed to a Commission decision in a utility-

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<sup>3</sup> *Id.* at 6-8 (discussing transfers with the City of Blanding, City of Hurricane, the Navajo Tribal Utility Authority, and Beaver City).

specific investigation, would establish general rules of applicability that would govern future utility conduct, and more importantly, would provide appropriate notice and an opportunity for all Utah stakeholders to be heard on these important Commission policies.

### **III. Conclusion**

7. Rocky Mountain Power respectfully requests the Commission approve the Division's recommendations, subject the procedural recommendations discussed above.

Dated this 7th day of March, 2024.

ROCKY MOUNTAIN POWER

/s/ Zachary Rogala  
Zachary Rogala  
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Telephone No. (435) 319-5010

*Attorney for Rocky Mountain Power*

**CERTIFICATE OF SERVICE**

Docket No. 24-035-03

I hereby certify that on March 7, 2024, a true and correct copy of the foregoing was served by electronic mail to the following:

**Utah Office of Consumer Services**

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**Rocky Mountain Power**

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