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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

Formal Complaint of NWR Limited Partnership against Rocky Mountain Power	DOCKET NO. 25-035-58  <b>ROCKY MOUNTAIN POWER'S OBJECTION TO NWR LIMITED PARTNERSHIP'S REQUEST TO SUBMIT FOR DECISION</b>
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Pursuant to Sections R746-1-105 and R746-1-301 of the Utah Administrative Code and Utah Rule of Civil Procedure 7, Rocky Mountain Power (“RMP”) objects to NWR Limited Partnership’s (“NWR”) Request to Submit for Decision (the “Request”), filed in this matter on May 6, 2026.

In the Request, NWR asserts that the time for briefing on its Motion for Partial Summary Judgment (the “Summary Judgment Motion”), filed on February 17, 2026, has passed and that the motion is now ready for review. However, the Public Service Commission (the “Commission” or the “PSC”) has not yet resolved RMP’s earlier-filed motion to dismiss NWR’s Complaint. Additionally, RMP has filed a Motion to Defer Briefing on the Summary Judgment Motion while other dispositive motions are pending before the Commission. Accordingly, RMP objects to NWR’s request to submit for decision due to these pending motions. The issue is not ripe for

review, and the Commission should defer consideration of the Summary Judgment Motion until it has resolved the other pending motions and allowed RMP to conduct discovery on disputed issues.

### **BACKGROUND**

On October 29, 2025, NWR filed its formal Complaint with the Commission, arguing that RMP shut off its power in violation of agreements between it and RMP. RMP responded with its Answer and Motion to Dismiss on December 1, 2025 (the “Motion to Dismiss”). In the Motion to Dismiss, RMP requests that the Commission dismiss NWR’s Complaint with prejudice due to its failure to allege that RMP has violated any applicable law, Commission Rule, or RMP tariff for which relief can be sought. *Id.* ¶ 24. The Commission has not yet ruled on the Motion to Dismiss.

While the Motion to Dismiss remained pending, NWR filed a Motion for Partial Summary Judgment, requesting that the Commission rule that a single agreement, the 2019 Master Electric Service Agreement, is “the complete agreement of the Parties, governing all issues between the parties in this appeal, and that no other agreement is relevant.” *See* Summary Judgment Motion at 1. In response, on March 6, 2026, RMP filed a Motion to Defer Briefing and Ruling on NWR’s Summary Judgment Motion (the “Motion to Defer”), asking the Commission to delay ruling on the Summary Judgment Motion until after discovery or, in the alternative, to extend RMP’s response deadline until after a ruling on the Motion to Defer. *Id.* at 1. NWR responded to the Motion to Defer on April 13, 2026.

On May 6, 2026, NWR filed its Request to Submit for Decision, claiming that because RMP did not file anything styled as an opposition to its Summary Judgment Motion, RMP has admitted to its statement of the facts, that the time for briefing has passed, and that the Summary Judgment Motion is now ripe for review. *See* Request at 2.

## ARGUMENT

NWR's Request is improper, and RMP objects to it both factually and procedurally. First, disputes of material fact, as outlined in both the Motion to Dismiss and Motion to Defer, make summary judgment inappropriate in this case. NWR's contention that RMP has not responded to its Summary Judgment Motion is unfounded, as RMP has repeatedly challenged the facts alleged by NWR, and NWR has not met its burden to succeed on summary judgment. Second, summary judgment is procedurally improper at this early stage in the dispute, and the Commission should not consider NWR's motion before evaluating the Motion to Dismiss or allowing discovery on the many contested issues present in this matter. Finally, the Commission should not consider NWR's Motion for Summary Judgment, which is based entirely on procedural technicalities, before evaluating the merits of this dispute.

In the Summary Judgment Motion, NWR requests that the Commission rule that the 2019 Master Electric Service Agreement is the complete agreement between it and RMP and that no other agreement is relevant to this dispute. *See* Summary Judgment Motion at 1. RMP has repeatedly and forcefully denied this very allegation. In the Answer and Motion to Dismiss, RMP details the history between RMP, NWR, and NWR's affiliated entities. *See* Motion to Dismiss ¶¶ 33–36. NWR representative Rachel Kingston was a signatory to agreements with RMP in 2014, 2018, and 2019, and RMP maintains that each of these agreements are relevant to this dispute. *Id.*; *see also* Motion to Defer at 4, 7–8 (maintaining that NWR is responsible for the obligations under the 2014 agreement). RMP's pleadings establish a material dispute of fact; therefore, the Commission is precluded from granting summary judgment for NWR. *See Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*, 925 P.2d 941, 946 (Utah 1996) (“summary judgment cannot be granted where there are disputed facts”); *Grow v. Marwick Dev., Inc.*, 621 P.2d 1249, 1252 (Utah 1980)

(holding that “[i]f there is a question of fact raised by the pleadings or affidavits, the court is precluded from granting summary judgment” and reversing summary judgment based on disputes of fact raised in answer). Based on these filings, NWR is undoubtedly aware that RMP disputes its allegations in the Summary Judgment Motion, and the Commission should not consider the motion where clear factual disputes remain. *See Carter v. State*, 2019 UT 12, ¶ 39, 439 P.3d 616, 626 (“Summary judgment is only appropriate if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.”) (citations omitted).

Next, as explained in the Motion to Defer, the Commission should not rule on NWR’s early Summary Judgment Motion until after it has made a determination on RMP’s Motion to Dismiss. Rule 56(d) provides that, when a nonmoving party shows that it cannot present facts essential to justify its opposition, the court may defer considering the motion, deny it without prejudice, allow further time for discovery, or issue any other appropriate order. U. R. Civ. P. 56(d). Utah courts and the PSC have applied this rule to defer ruling on summary judgment where further discovery is necessary. *See* Motion to Defer 6–7. The Commission should apply this standard here, where discovery is needed to show which agreements between NWR and RMP are relevant to this dispute and who is responsible for amounts owed under these agreements, among other issues. *Id.* 7–8. In short, the Commission should not grant NWR summary judgment before any discovery has occurred and RMP has had the chance to develop and present its case.

Rather than contend with these arguments, the clear need for discovery, or any of the other pending motions in this matter, NWR has submitted the Request in an attempt to circumvent regular procedures and have the PSC grant it a favorable ruling based on a technicality. But “[t]he policy of [Utah’s] rules of civil procedure is to decide cases on the merits rather than pleading

technicalities.” *Guardian State Bank v. Stangl*, 778 P.2d 1, 8 (Utah 1989); *see also Cougar Canyon Loan LLC v. Walker*, 2020 UT App 176, ¶ 22, 482 P.3d 227, 233 (“in general our legal system strongly prefers to decide cases on their merits.”) (citations omitted).

These concerns are heightened when a party has requested summary judgment, as “[I]tigators must be able to present their cases *fully* to the court before judgment can be rendered against them . . . [p]rior to the completion of discovery [ ] it is often difficult to ascertain whether the nonmoving party will be able to sustain its claims. In such a case, summary judgment should generally be denied.” *Drysdale v. Ford Motor Co.*, 947 P.2d 678, 680 (Utah 1997) (internal citations omitted) (emphasis in original); *see also Auerbach’s, Inc. v. Kimball*, 572 P.2d 376, 377 (Utah 1977) (“When a motion is made opposing summary judgment, on the ground discovery has not been completed, the court should grant a continuance or deny the motion for summary judgment”). As explained above, RMP’s Motion to Dismiss and Motion to Defer both clearly demonstrate that the 2019 agreement is not the only relevant agreement between the parties. NWR’s assertion that RMP has admitted to the facts in its Summary Judgment Motion ignores these Motions and asks the Commission to decide this issue based on procedural technicalities rather than the merits. The Commission should not prematurely consider the Summary Judgment Motion, but should first consider the Motion to Dismiss and allow discovery if necessary.

In the Request, NWR cites two decisions from Utah courts to support its argument that the Commission should grant its motion. *See Request* at fn. 2. However, both cases are factually inapposite and lend no support to its Request. In *Haycock v. Est. of Ellen S. Haycock*, the Court of Appeals upheld the district court’s grant of summary judgment where the plaintiff failed to file anything between the defendants filing of the summary judgment motion and the notice to submit for decision. 2000 UT App 347. Similarly, in *Jones v. Layton/Okland*, the Supreme Court upheld

entry of summary judgment against a party that did not respond to a motion for summary judgment, a request to submit for decision, or a proposed final order. 2009 UT 39, ¶ 5, 214 P.3d 859, 860–61.

Neither decision is relevant here. RMP responded to the Summary Judgment Motion by asking the Commission to defer ruling on it until it had ruled on the pending Motion to Dismiss and allowed for discovery. Unlike the parties in *Haycock* or *Jones*, RMP has attentively responded to NWR’s motions and should not be penalized for any purported failure to respond to NWR’s Summary Judgment Motion. See *Tangren v. Ingalls*, 12 Utah 2d 388, 395, 367 P.2d 179, 184 (1961) (“The sustaining of summary motions without affording the party an opportunity to present his evidence is a stringent measure which courts should be reluctant to grant.”).

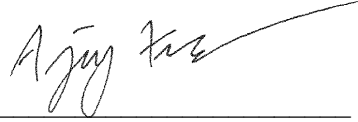
Altogether, the Commission should sustain RMP’s objection to NWR’s Request and defer ruling on the Summary Judgment Motion. The Request is premature, as the Commission has not yet ruled on RMP’s Motion to Dismiss or Motion to Defer. Moreover, it seeks to decide crucial issues on a technicality, without affording RMP the opportunity to conduct essential discovery. If the Commission is not inclined to sustain RMP’s objection and defer ruling on the Summary Judgment Motion, RMP requests that the Commission grant it an extension to file an opposition to the Summary Judgment Motion.

### **CONCLUSION**

For the reasons stated above, the Commission should sustain RMP’s objection to NWR’s Request to Submit for Decision or, in the alternative, grant RMP an extension to respond to the Summary Judgment Motion.

Dated this 11<sup>th</sup> day of May 2026,

ROCKY MOUNTAIN POWER

A handwritten signature in black ink, appearing to read "Ajay Kumar", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

Docket No. 25-035-58

I hereby certify that on May 11, 2026, a true and correct copy of the foregoing was served by electronic mail to the following:

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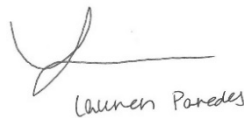
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