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December 21, 2015

***VIA ELECTRONIC FILING  
AND OVERNIGHT DELIVERY***

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 Secretary

RE: Docket No. 15-035-\_\_\_\_\_  
Application 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

Rocky Mountain Power hereby submits for filing an original and ten (10) copies of its  
Application in the above referenced matter, along with Rocky Mountain Power's direct  
testimony and exhibits. Also enclosed is the confidential CD with electronic copies of the  
application, testimony and exhibits. The Company will also provide an electronic version of this  
filing to [psc@utah.gov](mailto:psc@utah.gov).

Rocky Mountain Power 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)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

Informal inquiries may be directed to Bob Lively, Utah Regulatory Manager at (801)  
220-4052.

Sincerely,

Jeffrey K. Larsen  
Vice President, Regulation

Enclosures  
CC: service list

## CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> of December 2015, a true and correct copy of the foregoing was served by email and/or overnight delivery on the following:

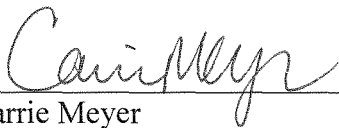
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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	Docket No. 15-035-____  <b>APPLICATION 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>
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PacifiCorp doing business as Rocky Mountain Power (“Rocky Mountain Power” or the “Company”), pursuant to Utah Code Ann. § 54-4-25 and Utah Admin. Code R746-100-3.A, respectfully requests that the Commission (1) approve the Purchase and Transfer Agreement (“PTA”) between Rocky Mountain Power and the Navajo Tribal Utility Authority (“NTUA”) attached as Confidential Exhibit RMP\_\_\_\_(LPM-1) to the testimony of Loren P. (“Lucky”) Morse

filed herewith, as amended by the First Amendment to the Purchase and Transfer Agreement (“First Amendment to PTA”), attached as Confidential Exhibit RMP\_\_\_\_(LPM-2) to Mr. Morse’s testimony, and the Second Amendment to the Purchase and Transfer Agreement (“Second Amendment to PTA”), attached as Confidential Exhibit RMP\_\_\_\_(LPM-3) to Mr. Morse’s testimony, (2) approve the Power Supply Agreement (“PSA”) between Rocky Mountain Power and NTUA, which is Exhibit N to the PTA, as amended by the First Amendment to the Power Supply Agreement (“Amendment to PSA”), attached as Confidential Exhibit RMP\_\_\_\_(LPM-4) to Mr. Morse’s testimony, (3) find the entire proposed transaction, including the PTA and PSA, prudent, and (4) amend Certificate of Public Convenience and Necessity No. 1118 (“Certificate”) issued to Rocky Mountain Power to remove the geographic area in San Juan County, Utah, within the boundaries of the Navajo Nation in which NTUA is responsible to provide electric service (known in the PTA as the “NTUA Assumed Service Territory”) as described and shown in Exhibit RMP\_\_\_\_(LPM-5) to Mr. Morse’s testimony.

## **I. INTRODUCTION**

1. PacifiCorp is an Oregon corporation that provides electric service to retail customers through its Rocky Mountain Power division in the states of Utah, Wyoming, and Idaho, and through its Pacific Power division in the states of Oregon, California, and Washington.

2. Rocky Mountain Power is a public utility in the state of Utah and is subject to the Commission’s jurisdiction with respect to its prices and terms of electric service to retail customers in Utah. The Company serves approximately 835,000 customers and has approximately 2,165 employees in Utah. Rocky Mountain Power’s principal place of business in Utah is 1407 West North Temple, Salt Lake City, Utah 84116.

3. Communications regarding this filing should be addressed to:

Bob Lively  
Utah Regulatory Affairs Manager  
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1407 West North Temple, Suite 330  
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In addition, Rocky Mountain Power requests that all data requests regarding this filing be sent in Microsoft Word or plain text format to the following:

By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232

Informal questions may be directed to Bob Lively, Utah Regulatory Affairs Manager at (801) 220-4052.

## **II. BACKGROUND**

4. Rocky Mountain Power has provided service to certain customers located within a portion of the Navajo Nation (“Nation” or “Navajo Nation”) in San Juan County, Utah, for many years. This service has been provided with the consent of the Nation and pursuant to the Company’s tariffs and regulations on file with and approved by the Commission and pursuant to the Certificate.

5. With the exception of service to the operator of the Aneth Oil Field, currently operated by Resolute Natural Resources Company, LLC (“Resolute”), the Company’s customers

within the Nation have generally been residential and small commercial customers in relatively small clusters, spread out over large geographical areas. The Company's line extension charges for extending service to new customers have been beyond the means of many individual customers. In some cases, the line extension charges have been satisfied through grants from the Nation, which must be obtained through a lengthy and complex process. As a result, the percentage of Navajo Nation residents that remain without electricity is relatively high.

6. Currently the Company provides service to 1,045 customers located within the Nation utilizing 29.79 miles of transmission lines, 335 miles of distribution lines and four substations. In 2014, the total load of these customers was 40.86 megawatts and their total consumption of electricity was 286,235 megawatt hours, with Resolute accounting for the substantial majority of the load and energy consumption.

7. In 1959, the Nation created NTUA and authorized it to provide utility services throughout the Nation. Since that time, NTUA has developed and acquired utility assets to provide electric, communication, natural gas, renewable energy, water and wastewater utility services within the Nation.

8. NTUA currently serves approximately 39,600 electric customers who are spread out over a 27,000 square mile service territory. It employs approximately 720 individuals, 97 percent of whom are of Navajo descent. NTUA is the largest multi-utility owned and operated by an American Indian Tribe. NTUA is eligible for loans from the Rural Utility Service of the United States Department of Agriculture ("RUS"). Thus, NTUA has access to available capital at reasonable costs and has secured financing for this acquisition.

9. In order to obtain easements from the Nation for the Company to provide service within the Nation, Rocky Mountain Power agreed in 1959 that the Nation would have an option

to purchase certain facilities serving customers within the Nation and negotiate to purchase other facilities. This agreement is memorialized in three letters exchanged between Rocky Mountain Power and the Nation's Council in 1959 ("Letter Agreement"). A copy of the Letter Agreement is Exhibit D to the PTA.

10. In 1973, 1981 and 1989, NTUA approached the Company regarding the possible exercise of its option to acquire facilities of the Company used to provide service to customers within the Nation pursuant to the terms of the Letter Agreement. None of these approaches resulted in NTUA's acquisition of any Company facilities, in part due to disagreements between the Company and NTUA regarding interpretation and application of the Letter Agreement.

11. Rocky Mountain Power has continued to provide electric service to customers within the Nation in accordance with the terms and conditions of its tariffs, schedules and regulations on file with and approved by the Commission and with the consent of the Nation.

12. In 2009, NTUA again commenced discussions with the Company regarding acquisition of the Company's facilities within the Nation. The parties pursued discussions and negotiations in good faith, addressing and ultimately resolving a number of difficult issues. On December 4, 2013, the parties entered into the PTA and PSA, subject to approval of the transaction by the Council and the Commission and other necessary approvals. Approval and closing of the agreements was subsequently delayed for a number of reasons, and the agreements were later amended. Some of the original dates and timelines contemplated in the agreements have passed, but the parties now intend to proceed to closing and implementation of the agreements upon Company receipt of Commission approval and other required approvals. The agreements as amended represent a difficult and delicate compromise and balancing process and should be viewed together and in their entirety.

### **III. PURCHASE AND TRANSFER AGREEMENT**

13. The PTA requires Rocky Mountain Power to sell and NTUA to purchase all of the Company's facilities within the Nation used to provide electric service to customers within the Nation. NTUA has agreed to accept Rocky Mountain Power's facilities and their associated easements in their current condition without any warranties of any kind. However, the Company has agreed to reimburse NTUA for certain costs it may incur as provided in the PTA and as described in the confidential testimony filed in support of this Application ("Confidential Testimony").

14. The facilities are to be sold and purchased for a value provided in the PTA and described in the Confidential Testimony.

15. As provided in the Navajo Nation Council Resolution ("Resolution"), attached as Confidential Exhibit RMP\_\_\_(WWH-1) to the testimony of Walter W. Haase, and the PTA and described more fully in the Confidential Testimony, the Nation has agreed to grant certain waivers to the Company and NTUA has agreed to bear certain costs associated with the transaction in consideration of the transaction. Among other things, NTUA has agreed to reimburse the Company for its expenses incurred in undertaking the transaction, including its costs of inventorying the facilities and easements and performing studies related to the transition of service, its transaction costs, costs incurred in separating the Company's facilities from NTUA's facilities, and costs, if any, required to upgrade the Company's facilities to meet the standards of the RUS. NTUA has also agreed to include in the purchase price a pro-rated share of property taxes to be paid by the Company, to reimburse the Company for any tax effects of the transaction and to pay any transfer fees associated with the transaction.

16. To accommodate continued service to Resolute by the Company through the expiration of its Master Electric Service Agreements ("MESAs") on June 29, 2017, the sale of



facilities and transfer of customers is planned to take place in up to three steps depending on when the first closing occurs in relation to Resolute's completion of a transmission line and related facilities enabling it to receive power from the Company at Resolute's Aneth, McElmo and Ratherford Substations and the expiration of the Company's MESAs with Resolute.

a. In the first step referred to in the PTA as the Closing, which will occur prior to or at the expiration of the Company's MESAs with Resolute, the Company will transfer facilities and related easements and rights of way to NTUA that are not used in providing service to Resolute as well as the customers served from the transferred facilities.

b. In the second step referred to in the PTA as the Interim Changeover, which will also occur prior to or at the expiration of the Company's MESAs with Resolute, the Company will transfer the facilities and related easements and rights of way currently used to serve Resolute (known in the PTA as the "Resolute Facilities") as well as the customers served from those facilities (known in the PTA as the "Resolute Facilities Customers") to NTUA if Resolute completes its transmission line and related facilities enabling it to receive power from the Company at Resolute's McElmo and Ratherford Substations prior to expiration of the Company's MESAs with Resolute. If Resolute does not complete its transmission line and related facilities prior to expiration of the MESAs, the Interim Changeover will take place at the same time as the Resolute Changeover.

c. In the third step referred to in the PTA as the Resolute Changeover, the Company will transfer any remaining facilities used to serve Resolute and other customers served off of Resolute's transmission line and the customers served from those

facilities (known in the PTA as the “Resolute Customers”) to NTUA at the expiration of the Company’s MESAs with Resolute.

d. As provided in the PTA and described in the Confidential Testimony, NTUA has an option under the PTA that could affect the timing of these steps.

17. Although Resolute intends to complete facilities that would enable it to take service directly from the Company outside the Nation for use within the Nation, Rocky Mountain Power has agreed in the PTA that it will not provide service to any customer for electric power to be used within the Nation. To facilitate this agreement, Rocky Mountain Power has agreed to allow NTUA to install metering facilities between the Company’s and Resolute’s facilities prior to the Resolute Changeover.

18. Fourteen customers located on lands adjacent to the Nation are served through facilities on the Nation that will be transferred to NTUA as part of the transaction. It is impractical at this time for the Company to install completely separate facilities to serve these customers and installation of limited facilities by the Company to serve them would require continued coordination with NTUA and the potential for confusion as to the responsible provider in the event of outages. Therefore, subject to approval of the Commission, these customers will be transferred to NTUA. NTUA agrees in the PTA that it will charge these customers the same rates, including refunds or rebates, and provide service to these customers on the same terms and conditions as it provides service to similarly situated customers within the Nation. NTUA also agrees in the Second Amendment to PTA that in the event the Company is able to provide service directly to these customers in the future, NTUA will transfer the customers back to the Company.

19. As provided in the PTA and described in the Confidential Testimony, NTUA will have certain options under the agreements.

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

21. In the PTA, NTUA grants a limited waiver of sovereign immunity and agrees to binding arbitration to resolve any disputes that arise under the PTA. Absent this waiver and agreement, it is NTUA's position that any dispute between the Company and NTUA under the PTA can only be resolved in an action commenced by NTUA. Presumably, NTUA would commence such an action in the Navajo Tribal Courts.

#### **IV. POWER SUPPLY AGREEMENT**

22. The PSA provides that PacifiCorp will provide a firm supply of power to NTUA sufficient to serve the customers being transferred from Rocky Mountain Power to NTUA under the PTA on terms essentially equivalent to Schedule 9 of Rocky Mountain Power's Utah tariff for a period of 10 years commencing on the Changeover Date as provided in the PSA. Because NTUA (and the transferred customers) will not be eligible to participate in the Company's Demand Side Management ("DSM") programs and incentives, NTUA will not be required to pay the DSM surcharge normally included for Schedule 9 customers or any successor or similar charges.

23. The PSA provides a maximum contract demand equal to the current demand of the transferred customers plus reasonably anticipated growth in the number of customers and of

Resolute's demand as already planned between the Company and Resolute. It obligates NTUA to pay for any transmission system studies and upgrades needed to accommodate increased demand that are not already being paid for by Resolute.

24. The Company has been in discussions with Resolute over the past several years regarding its plans to significantly increase the scope of its operations in the Aneth Oil Field. Resolute has anticipated that its demand would increase substantially in the future. It is not known at this time if or when Resolute may increase or decrease the scope of its operations in the Aneth Oil Field.

25. To the extent Resolute increases its demand during the period that the Company continues to serve Resolute, the Company will deal directly with Resolute under its existing MESAs and applicable regulations. To the extent an increase in load under the PSA results from other customers or from Resolute after NTUA assumes service to Resolute, the PSA provides that NTUA shall not interconnect any new large single load with a capacity greater than one megawatt, other than the transfer of Resolute's load to NTUA, without PacifiCorp's prior consent. In addition, NTUA is required to provide PacifiCorp with at least one-year's advance notice of any increase or decrease in demand greater than one megawatt. PacifiCorp is not obligated to serve any aggregated load over the present interconnection capacity, except that NTUA may increase the total aggregate load to an amount specified in the PSA, subject to completion of all necessary studies, agreements and transmission system improvements at NTUA's expense pursuant to the terms and conditions of Regulation 12. NTUA will pay for any transmission system studies and upgrades needed to accommodate increased demand that are not paid for by Resolute.

26. NTUA has certain options under the PSA that are described in the Confidential Testimony.

27. The Company and its customers will receive benefits from the Company's continued provision of power to NTUA to serve the transferred customers under the PSA following completion of the transaction.

## **V. FIRST AMENDMENT TO PTA**

28. In the process of seeking approval of the Council to the transaction, it became apparent that the Council's specific approval of the PTA and PSA was not necessary to assure that they would be binding agreements and particularly that NTUA's limited waiver of sovereign immunity and agreement to participate in binding arbitration would be binding on NTUA. The Council had previously granted authority to the NTUA Management Board to grant waivers of sovereign immunity and agree to binding arbitration effective 30 days after providing written notice to the Speaker of the Council. *See* Navajo Nation Council Resolution No. CAP-18-10, Exhibit RMP\_\_\_\_(WWH-2) to the testimony of Walter W. Haase. The Resolution of the Management Board, Exhibit L to the PTA, already satisfied that requirement without the necessity of the Council including its approval of the PTA and PSA and the limited grant of waiver of sovereign immunity and agreement to binding arbitration in the Council Resolution. Thus, the parties entered into the First Amendment to PTA effective March 4, 2015. A copy of the First Amendment to PTA is Confidential Exhibit RMP\_\_\_\_(LPM-2) to Mr. Morse's testimony.

29. The First Amendment to PTA provides a substitute proposed resolution in place of the proposed resolution attached as Exhibit K to the PTA.

30. The First Amendment to PTA also makes conforming amendments to provisions of the PTA referring to the approval of the Council through the Resolution.

31. The Amendment to PSA dated March 4, 2015, was also executed by the parties making conforming amendments to provisions of the PSA. The Amendment to the PSA is Confidential Exhibit RMP\_\_\_\_(LPM-4) to Mr. Morse's testimony.

## **VI. COUNCIL RESOLUTION**

32. On May 19, 2015, the Council adopted the Resolution in substantially the form of the resolution attached to the First Amendment to PTA. The Resolution as adopted was certified on May 27, 2015. A copy of the Resolution is provided as Confidential Exhibit RMP\_\_\_\_(WWH-1) to the testimony of Mr. Haase.

33. In the Resolution, the Council acknowledges that, upon completion of the transaction, the PTA and PSA fully satisfy the Letter Agreement and that the Company will retain ownership and use of the 345 kV transmission line and associated easement.

## **VII. SECOND AMENDMENT TO PTA**

34. As a result of a number of factors and circumstances, the planned schedule for seeking approval of the transaction, closing of the PTA and completion of the separation plan, which is Exhibit J to the PTA, needed to be modified.

35. The parties executed the Second Amendment to PTA dated December 2, 2015. A copy of the Second Amendment to PTA is Confidential Exhibit RMP\_\_\_\_(LPM-3) to Mr. Morse's testimony.

36. The Second Amendment to PTA modifies the dates by which the parties must take certain actions.

37. The Second Amendment to PTA also clarifies how service to customers outside the Nation that the parties agree would currently be better served by NTUA will be handled. These provisions are similar to provisions in Utah law with regard to service by municipal power systems to customers located outside their jurisdictional boundaries.

38. Finally, the Second Amendment to PTA clarifies an option in the PTA consistent with the understanding of the parties.

### **VIII. REGULATORY APPROVALS**

39. Rocky Mountain Power's current sales of electricity to customers within the Nation have been treated for interjurisdictional cost allocation purposes like sales to other Utah customers. Revenues and distribution investment and expenses for serving such customers have been assigned to Utah on a situs basis.

40. The loads of customers within the Nation have been included in the Utah jurisdiction, impacting allocation factors and the allocation of system related costs.

41. The bulk of the sales of power to customers within the Nation are to Resolute under Schedule 9. Following Closing, the Company expects to continue to sell power to Resolute under Schedule 9 for a period of time, and then to NTUA under Schedule 9 equivalent service for a subsequent period of time.

42. During the term of the PSA, there will be no significant changes to current inter-jurisdictional cost allocations. Revenues, costs and loads associated with the sale of assets and transfer of customers to NTUA pursuant to the PTA and with the sale of power to Resolute or to NTUA pursuant to the PSA will be situs-assigned to Utah during the term of the PSA.

43. The agreements were negotiated in order to treat Utah customers and other Company customers in a fair and reasonable manner. For example, sales to NTUA under the PSA are at Schedule 9 equivalent rates and will continue to be treated as Utah revenues and loads. Therefore, Utah customers will not be harmed because this treatment will continue for the balance of the term of Resolute's MESAs and thereafter so long as Schedule 9 equivalent sales are made. NTUA may also share in some of the benefits through payments as provided in the PTA and described in the Confidential Testimony. Because these payments are part of the

consideration for the overall transaction, it is fair and reasonable to find the agreements together and in their entirety prudent and provide assurance to Rocky Mountain Power that it will be able to recover payments made to NTUA pursuant to the agreements in Utah rates if it is required to pay them.

44. The Company also agreed to reimburse NTUA for certain costs it may incur as provided in the PTA and described in the Confidential Testimony. To the extent the Company incurs costs associated with these matters, it is fair and reasonable to provide assurance to the Company that it will recover them in Utah rates, both because they are part of the consideration for the overall transaction and because they are costs that would be recoverable absent the transaction.

## **IX. PUBLIC INTEREST**

45. Approval of the transaction is in the public interest for a number of reasons, including:

a. The agreements allow NTUA to provide service to customers within the Nation in accordance with the sovereignty, policies and wishes of the Nation. Because NTUA is an enterprise of the Nation, it is anticipated that it will be able to provide service to more residents of the Nation more promptly and economically than the Company could in light of the lengthy and expensive process required to obtain easements, permits and grants from the Nation, as well as the requirement that the Company comply with regulations of both the Nation and the Commission, including line extension policies in the Company's Utah tariff, which have prevented or delayed service to many customers within the Utah portion of the Nation.

b. The PTA allows service to current Company customers to be transitioned to NTUA in an orderly manner without significant disruption. The Council has



authorized NTUA to charge smaller customers rates comparable to those that would have been charged by Rocky Mountain Power for a reasonable transition period, until such time as NTUA adopts new rates in accordance with its regulatory authority under Navajo law, and to negotiate rates to be paid by large users.

c. The largest customer of Rocky Mountain Power within the Nation, Resolute, should continue to receive service from Rocky Mountain Power for the balance of the term of its MESAs. Moreover, Resolute can reasonably expect to continue to receive reliable service at rates below those that would be charged if the Company continued to provide service after transferring facilities to NTUA, considering necessary wheeling charges that would be imposed for the use of facilities that will be owned by NTUA.

d. The PSA assures that Rocky Mountain Power's customers within the Nation, including Resolute, will have the opportunity to have a reasonably priced power supply for many years following the transaction. It also provides a benefit to Rocky Mountain Power and its other customers by allowing the Company to have the opportunity to retain the load that has partially justified its investment in facilities outside of the Nation in the area for a reasonable period of time.

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

f. Rocky Mountain Power retains the 345 kV line and associated easement located within the Nation.

## **X. SUPPORTING EVIDENCE**

46. In support of this Application, the Company is filing the testimony and exhibits of Loren P. (“Lucky”) Morse, Director of Customer and Community Management for Rocky Mountain Power; Paul H. Clements, Director, Commercial Services for Rocky Mountain Power; Steven R. McDougal, Director of Revenue Requirement for Rocky Mountain Power; and Walter W. Haase, General Manager for NTUA.

## **XI. RELIEF REQUESTED**

For the reasons set forth herein, Rocky Mountain Power respectfully requests that the Commission:

1. Grant this Application to (a) approve the PTA as amended, (b) approve the PSA as amended, (c) find the entire proposed transaction, including the PTA and PSA, prudent, and (d) amend the Certificate to remove the NTUA Assumed Service Territory. Rocky Mountain Power requests that the Commission’s order granting this Application and amending the Certificate acknowledge that the regulatory treatment contemplated by the agreements, as discussed herein, is approved, including treatment of costs, revenues and loads associated with transferred facilities and customers and power sales as Utah situs, and recovery from Utah customers of any payments made by the Company pursuant to the agreements. The Company also requests that the Commission’s order be expressly conditioned on: (a) the Commission’s order becoming a Final Order, (b) the Final Order not being reversed on appeal in a manner that the parties are unable to address in a mutually satisfactory manner that the Commission approves, and (c) Rocky Mountain Power and NTUA completing the transfers contemplated in the PTA as provided in the PTA. In the event the foregoing conditions are not satisfied, the


Company requests that the Commission's order modifying Rocky Mountain Power's Certificate be vacated.

2. Hold a scheduling conference as soon as possible to schedule a hearing at the earliest possible date and schedule such other proceedings as may be required, with a requested Order date within the next six months.

3. Grant any further relief necessary for Rocky Mountain Power to complete the transaction with NTUA and as may be just and reasonable.

DATED: December 21, 2015.

Respectfully submitted,



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R. Jeff Richards  
Yvonne R. Hogle  
Rocky Mountain Power

Gregory B. Monson  
Stoel Rives LLP

*Attorneys for Rocky Mountain Power*

Rocky Mountain Power  
Docket No. 15-035-\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**REDACTED – PUBLIC VERSION**

Direct Testimony of Loren P. Morse

December 2015

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  
5       East, 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  
11      and 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  
14      engineering department and have held various customer account management,  
15      district management and community relations positions since that time. I assumed  
16      my current position in 2007. In that position, I am responsible for directing the  
17      work of a team of customer account and community management employees in  
18      Utah and Idaho as well as responsibility for economic development activities for  
19      Rocky Mountain Power. As the former district manager for the Moab/Blanding  
20      area and as director of customer and community relations, I was integrally  
21      involved in the negotiations with the Navajo Tribal Utility Authority (“NTUA”)  
22      that gave rise to 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  
33 and 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  
40 in San Juan County, Utah, and the terms and conditions of the Purchase and  
41 Transfer 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  
44 lies 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 copy of the PTA is provided as Confidential Exhibit RMP\_\_\_\_(LPM-1) to my testimony. A copy of the First Amendment to the Purchase and Transfer Agreement (“First Amendment to PTA”) is provided as Confidential Exhibit RMP\_\_\_\_(LPM-2) to my testimony. A copy of the Second Amendment to the Purchase and Transfer Agreement (“Second Amendment to PTA”) is provided as Confidential Exhibit RMP\_\_\_\_(LPM-3) to my testimony. A copy of the First Amendment to the Power Supply Agreement (“Amendment to PSA”) is provided as Confidential Exhibit RMP\_\_\_\_(LPM-4) to my testimony. The NTUA Assumed Service Territory is described in the PTA, and an illustrative map of the NTUA Assumed Service Territory is provided as Exhibit RMP\_\_\_\_(LPM-5) to my testimony.

**Summary of Testimony**

**Q. Please summarize your testimony.**

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

As explained more fully in Mr. Haase’s testimony, NTUA is an enterprise

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

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

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

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

91 As a result of a number of factors and circumstances, the planned schedule



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

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

115 of litigation, presumably in Navajo Tribal Courts, regarding its interpretation and  
116 application, and the Company will retain its 345 kV transmission line and  
117 associated easement located within the Nation.

118 **Background**

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

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

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

136 Currently the Company provides service to 1,045 customers located within  
137 the Nation utilizing 29.79 miles of transmission lines, 335 miles of distribution

138 lines and four substations. In 2014, the total load of these customers was 40.86  
139 megawatts and their total consumption of electricity was 286,235 megawatt hours,  
140 with Resolute accounting for the substantial majority of the load and energy  
141 consumption.

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

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

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

156 A. Yes. Providing service to new customers in the Nation can be difficult and time  
157 consuming. This is primarily due to the difficulty in receiving permits from the  
158 Nation to construct the electrical facilities and in obtaining necessary funds for the  
159 customer's share of costs beyond the allowance for the facilities. Obtaining funds  
160 requires an expensive and time consuming process that begins with surveying the

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

178 **Description of PTA**

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

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

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

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

187 [REDACTED]

188 [REDACTED]. The Company has not undertaken the extensive process to conduct an  
189 updated inventory of the facilities. However, one will be conducted in connection  
190 with the transfers of facilities contemplated by the PTA.

191 **Q. Has NTUA agreed to reimburse the Company for costs associated with the**  
192 **transaction?**

193 A. Yes. NTUA has agreed in the PTA to reimburse the Company for its expenses  
194 incurred in undertaking the transaction, including its costs in inventorying the  
195 facilities and easements and performing studies related to the transition of service,  
196 its transaction costs, including legal fees and other costs associated with  
197 applications for regulatory approvals [REDACTED], costs incurred in  
198 separating the Company's facilities from NTUA's facilities, and any costs  
199 required to upgrade the Company's facilities to meet the standards of the Rural  
200 Utilities Service of the United States Department of Agriculture ("RUS"), which  
201 will provide financing for NTUA's acquisition of the Company's facilities.  
202 NTUA has also agreed to include in the purchase price a pro-rated share of  
203 property taxes to be paid by the Company and any tax effects of the transaction  
204 and to pay any transfer fees associated with the transaction.

205 **Q. Does the Company have any potential offsets associated with the**  
206 **transaction?**

207 A. Yes. [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 [REDACTED]  
223 [REDACTED]  
224 [REDACTED].

225 **Q. How will the sale of facilities and transfer of customers take place under**  
226 **the PTA?**

227 A. To accommodate continued service to Resolute by the Company through the

228 expiration of its MESAs, the sale of facilities and transfer of customers is  
229 planned to take place in up to three steps depending on when the first closing  
230 occurs in relation to Resolute’s completion of a transmission line and related  
231 facilities enabling it to receive power from the Company at Resolute’s Aneth,  
232 McElmo and Ratherford Substations and the expiration of the Company’s  
233 MESAs with Resolute. In the first step referred to in the PTA as the Closing,  
234 which will occur prior to or at expiration of the MESAs, the Company will  
235 transfer facilities and related easements and rights of way to NTUA that are not  
236 used in providing service to Resolute as well as the customers served from the  
237 transferred facilities. In the second step referred to in the PTA as the Interim  
238 Changeover, which will also occur prior to or at expiration of the MESAs, the  
239 Company will transfer the facilities and related easements and rights of way  
240 currently used to serve Resolute (known in the PTA as the “Resolute Facilities”)  
241 as well as the customers served from those facilities (known in the PTA as the  
242 “Resolute Facilities Customers”) to NTUA when Resolute completes its  
243 transmission line and related facilities enabling it to receive power from the  
244 Company at the Resolute’s McElmo and Ratherford Substations. In the third  
245 step referred to in the PTA as the Resolute Changeover, the Company will  
246 transfer any remaining facilities used to serve Resolute and other customers  
247 served off of Resolute’s transmission line and the customers served from those  
248 facilities (known in the PTA as the “Resolute Customers”) to NTUA at  
249 expiration of the Company’s MESAs with Resolute. [REDACTED]  
250 [REDACTED]

- 251 [REDACTED]
- 252 [REDACTED].
- 253 **Q. Is it possible that the transaction could take place in less than three steps?**
- 254 A. Yes. If Resolute completes construction of its transmission line prior to Closing,
- 255 the first and second steps would be combined at Closing. If the MESAs expire [REDACTED]
- 256 [REDACTED] prior to Closing, all three steps would take
- 257 place at Closing. If Resolute has not completed its transmission line and related
- 258 facilities prior to expiration of the MESAs, the Interim Changeover and the
- 259 Resolute Changeover could be combined into a single event.
- 260 **Q. What is the status of Resolute's completion of its transmission line and**
- 261 **related facilities?**
- 262 A. Resolute has completed construction of a 138/69 kV substation and constructed a
- 263 69 kV line to its Aneth substation. Resolute is completing permit acquisition and
- 264 engineering and all work necessary to construct the 69 kV line to its McElmo and
- 265 Ratherford Substations and to construct the Ratherford Substation.
- 266 **Q. When do the MESAs expire?**
- 267 A. The MESAs expire at 12:01 am (Mountain Time) on June 29, 2017. Therefore, it
- 268 is likely that the Closing will take place before their expiration.
- 269 **Q. Does the PTA contemplate that Rocky Mountain Power will retain service**
- 270 **to any customers located within the Nation beyond the Resolute**
- 271 **Changeover?**
- 272 A. No. Although Resolute intends to complete facilities that would enable it to take
- 273 service directly from the Company outside the Nation for use within the Nation,



274 the Company has agreed in the PTA that it will not provide service to any  
275 customer for electric power to be used within the Nation following completion of  
276 the transaction. To facilitate this agreement, the Company has agreed to allow  
277 NTUA to install metering between the Company's metering and Resolute's  
278 138/69 kV substation prior to the Resolute Changeover.

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

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

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

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

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

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

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

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

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

316 A. No. The Resolution permits NTUA to serve these customers. NTUA's service  
317 to these customers will be similar to the service provided by various municipal

318 power systems to customers located outside their municipal boundaries.

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

321 A. Yes. NTUA agrees in Section 2.5.6 of the PTA that it will charge these customers  
322 the same rates, including refunds or rebates, and provide service to these  
323 customers on the same terms and conditions as it provides service to similarly  
324 situated customers within the Nation. It also agrees to have a reasonable  
325 mechanism for these customers to resolve disputes with NTUA regarding their  
326 service from NTUA.

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

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

339 **Q.** The PTA also refers to [REDACTED] potential payments from the  
340 Company to NTUA [REDACTED]  
341 [REDACTED]. Please explain.

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

346 [REDACTED]  
347 [REDACTED]  
348 [REDACTED]  
349 [REDACTED]  
350 [REDACTED]  
351 [REDACTED]  
352 [REDACTED]  
353 [REDACTED]  
354 [REDACTED]  
355 [REDACTED]  
356 [REDACTED]  
357 [REDACTED]  
358 [REDACTED]  
359 [REDACTED]  
360 [REDACTED].

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

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

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

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

375 [REDACTED]  
376 [REDACTED].

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

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

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

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

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

401 **Description of PSA**

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

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

407 Changeover Date as provided in the PSA. Mr. Clements will describe the PSA in  
408 more detail in his testimony.

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

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

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

419 **First Amendment to PTA**

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

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

430 RMP\_\_\_\_(WWH-2) to Mr. Haase's testimony. The Resolution of the Management  
431 Board, Exhibit L to the PTA, already satisfied that requirement without the  
432 necessity of the Council including its approval of the PTA and PSA in the Council  
433 Resolution. Thus, the parties entered into the First Amendment to PTA dated  
434 March 4, 2015.

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

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

444 A. Yes. As explained in the testimony of Mr. Haase, the written notice was provided  
445 to the Speaker on September 11, 2013, and, thus, was effective on October 11,  
446 2013.

447 **Resolution**

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

449 A. Yes. On May 19, 2015, the Council adopted a resolution in substantially the form  
450 of the resolution attached to the First Amendment to PTA. The Resolution as  
451 adopted as certified on May 27, 2015. A copy of the Resolution is provided as  
452 Confidential Exhibit RMP\_\_\_\_(WWH-1) to Mr. Haase's testimony.



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

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

461 **Second Amendment to PTA**

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

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

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

476 additional customers located outside the Reservation request service from NTUA  
477 in the future and if NTUA is willing to serve them, they may be served by NTUA  
478 if the Company consents and if the Commission approves service by NTUA.  
479 Service to these customers would also be transferred back to Rocky Mountain  
480 Power by NTUA if the Company eventually installs facilities to serve them  
481 directly.

482 **Public Interest**

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

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

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

495 Second, the PTA provides that service to the customers of the Company  
496 will be transitioned to NTUA in an orderly manner without significant disruption.  
497 NTUA has also agreed to allow customers to continue to be charged rates  
498 commensurate with those that would be charged by the Company for a reasonable

499 transition period until such time as NTUA adopts new rates in accordance with its  
500 regulatory authority under Navajo law.

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

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

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

515 Sixth, the Company retains the 345 kV line and associated easement  
516 located within the Nation.

517 **Conclusion**

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

519 A. The PTA and PSA are the product of extensive and difficult negotiations between  
520 the Company and NTUA. They represent a carefully balanced and delicate  
521 compromise of complex issues and must be viewed together and in their entirety.

522 Approval of the PTA and PSA is in the public interest for the reasons stated  
523 above.

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

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

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

529 A. Yes.

**CONFIDENTIAL**

Rocky Mountain Power  
Exhibit RMP\_\_\_\_(LPM-1)  
Docket No. 15-035-\_\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

---

**CONFIDENTIAL**  
Exhibit Accompanying Direct Testimony of Loren P. Morse  
Purchase and Transfer Agreement (“PTA”)

December 2015

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Rocky Mountain Power  
Exhibit RMP\_\_\_\_(LPM-2)  
Docket No. 15-035-\_\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**CONFIDENTIAL**  
Exhibit Accompanying Direct Testimony of Loren P. Morse  
First Amendment to PTA

December 2015

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Rocky Mountain Power  
Exhibit RMP\_\_\_\_(LPM-3)  
Docket No. 15-035-\_\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

---

**CONFIDENTIAL**  
Exhibit Accompanying Direct Testimony of Loren P. Morse  
Second Amendment to PTA

December 2015

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Rocky Mountain Power  
Exhibit RMP\_\_\_\_(LPM-4)  
Docket No. 15-035-\_\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**CONFIDENTIAL**  
Exhibit Accompanying Direct Testimony of Loren P. Morse  
First Amendment to Power Supply Agreement (“PSA”)

December 2015

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Rocky Mountain Power  
Exhibit RMP\_\_\_\_(LPM-5)  
Docket No. 15-035-\_\_\_\_  
Witness: Loren P. Morse

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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Exhibit Accompanying Direct Testimony of Loren P. Morse

Illustrative Map of the NTUA Assumed Service Territory

December 2015

- Legend**
- Customers To Be Transferred
- Outside Nation
  - Distribution Substation
- Transformers**
- Location**
- Inside Navajo Nation
  - Outside Navajo Nation

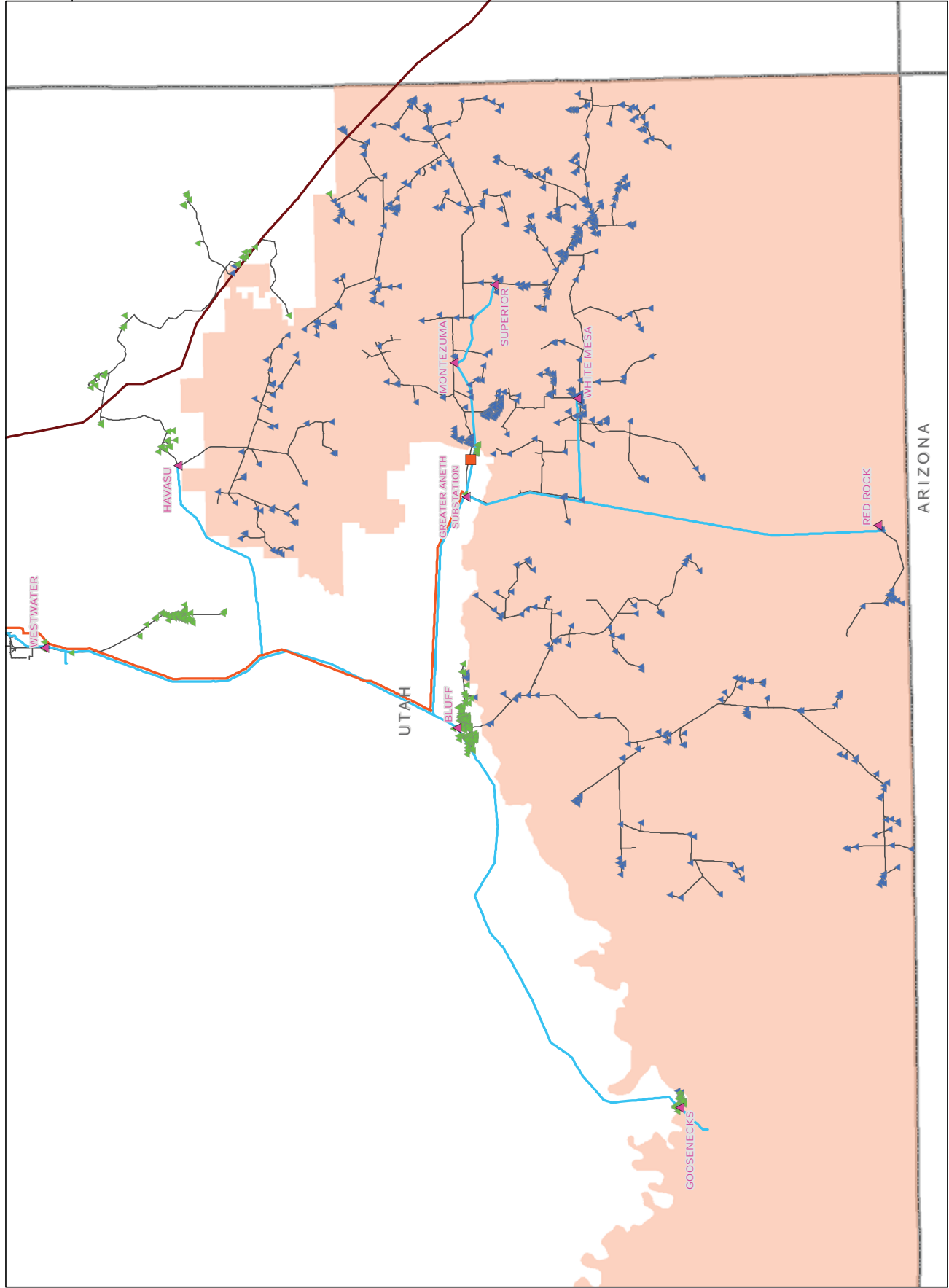
- Transmission Line**
- Operating Voltage KV
- 69
  - 138
  - 345
- Distribution Lines
- Assumed Service Territory
- State Boundary

Rocky Mountain Power  
Exhibit RMP (LPM-5) Page 1 of 1  
Docket No. 15-035-  
Witness: Loren P. Morse



GIS SUPPORT SERVICES  
Solutions Group  
gisdept@pacifiCorp.com

Data is projected in UTM Zone 12, NAD83, meters.  
No Warranty. With respect to any information, including but not limited to, the accuracy, completeness, or timeliness of the information, the disclosing party makes no representation or warranty, and shall not be liable for any damages or losses, including consequential damages, arising from the use of the information. The user acknowledges that the information is provided for informational purposes only and is not intended to be used for any other purpose. The user agrees to hold the disclosing party harmless from and against all claims, damages, and expenses, including reasonable attorneys' fees, arising from the use of the information. It is further understood and agreed that no party or its representatives shall be liable to another party or its representatives for any damages or losses, including consequential damages, arising from the use of the information. The user agrees to hold the disclosing party harmless from and against all claims, damages, and expenses, including reasonable attorneys' fees, arising from the use of the information.



Rocky Mountain Power  
Docket No. 15-035-\_\_\_  
Witness: Paul H. Clements

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**REDACTED – PUBLIC VERSION**

Direct Testimony of Paul H. Clements

December 2015

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 Paul H. Clements. My business address is 1407 West North Temple  
5       Street, Salt Lake City, Utah 84116. My present position is Director, Commercial  
6       Services for the Company.

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

8    A.    I have a Bachelor of Science degree in Business Management from Brigham  
9       Young University. I have been employed with PacifiCorp since 2004 in various  
10      commercial roles related to wholesale power marketing. I have been responsible  
11      for negotiating qualifying facility contracts, negotiating interruptible retail special  
12      contracts, and managing wholesale or market-based energy and capacity contracts  
13      with other utilities and power marketers. I also worked in the merchant energy  
14      sector for approximately six years in pricing and structuring, origination, and  
15      trading roles for Duke Energy and Illinova. In my current position, I was  
16      integrally involved in negotiation of the Power Supply Agreement (“PSA”)  
17      between the Company and the Navajo Tribal Utility Authority (“NTUA”), which  
18      is a subject of the current Application.

19   **Q.    Have you previously testified before this Commission or other state**  
20       **commissions?**

21   A.    Yes. I have provided testimony in several dockets before this Commission,  
22       including most recently Docket Nos. 15-035-53 and 15-035-61. I have also  
23       presented testimony before the Idaho and Wyoming public utility commissions.



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

25 A. The purpose of my testimony is to support approval by the Commission of the  
26 Application for Approval of Purchase and Transfer Agreement and Power Supply  
27 Agreement and Amendment of Certificate of Public Convenience and Necessity  
28 (“Application”) filed with this testimony. In particular, my testimony describes  
29 the PSA entered into between the Company and NTUA and explains why  
30 approval of the PSA, as amended, is in the public interest. The PSA is Exhibit N  
31 to the Purchase and Transfer Agreement (“PTA”) between the Company and  
32 NTUA. The PTA is Confidential Exhibit RMP\_\_\_\_(LPM-1) to the testimony of  
33 Loren P. (“Lucky”) Morse, also filed in support of the Application. The First  
34 Amendment to the PSA is Confidential Exhibit RMP\_\_\_\_(LPM-4) to Mr. Morse’s  
35 testimony.

36 **Summary of Testimony**

37 **Q. Please summarize your testimony.**

38 A. On December 4, 2013, the parties entered into the PSA, subject to approval of the  
39 transaction by the Navajo Nation Council and approval of the PSA by the  
40 Commission and other necessary approvals. The PSA was amended by agreement  
41 of the parties on March 4, 2015, to conform it with a modification to the  
42 Resolution of the Navajo Nation Council described in Mr. Morse’s testimony.

43 Approval of the PSA is in the public interest. It is an essential part of the  
44 overall transaction represented by the PTA and the PSA. The PSA will provide  
45 benefits to customers within the Nation and to the Company’s other customers.  
46 Through the PSA, the largest customer of the Company within the Nation,

47 Resolute Natural Resources Company, LLC (“Resolute”), will be assured of the  
48 opportunity to have a continued source of power to serve its needs for many years  
49 at rates below those that would be charged if the Company continued to provide  
50 service after transferring facilities to NTUA, considering necessary wheeling  
51 charges that would be imposed for the use of facilities that will be owned by  
52 NTUA.

53 **Power Supply Agreement**

54 **Q. Please describe the PSA.**

55 A. The PSA provides that PacifiCorp will provide a firm supply of power to NTUA  
56 sufficient to serve the customers being transferred from the Company to NTUA  
57 under the PTA on terms essentially equivalent to Schedule 9 of the Company’s  
58 Utah tariff for a period of 10 years commencing on the Changeover Date as  
59 provided in the PSA. It provides a maximum contract demand equal to the current  
60 demand of those customers plus reasonably anticipated growth in the number of  
61 customers and of Resolute’s demand as already planned between the Company  
62 and Resolute. It obligates NTUA to pay for any transmission system studies and  
63 upgrades needed to accommodate increased demand that are not already being  
64 paid for by Resolute.

65 **Q. Why do you say that service to NTUA under the PSA will be essentially**  
66 **equivalent to Schedule 9?**

67 A. Because NTUA (and the customers served by NTUA) will not be eligible to  
68 participate in the Company’s Demand Side Management (“DSM”) programs and  
69 incentives, NTUA will not be required to pay the DSM surcharge normally

70 included for Schedule 9 customers or any successor or similar charges. Other than  
71 that exception, service to NTUA under the PSA will be on the same terms and  
72 conditions as service to other Schedule 9 customers.

73 **Q. Will the Company continue to provide service to Resolute at standard**  
74 **retail tariff rates under the PSA, or will Resolute take service from NTUA?**

75 A. The PSA will become effective when NTUA takes over service to any customers  
76 within the Nation currently served by the Company. However, as explained more  
77 fully in Mr. Morse's testimony, customers may be transferred to NTUA in up to  
78 three steps. Resolute will not be transferred to NTUA until the last step.  
79 Therefore, the Company will continue to provide service to Resolute at standard  
80 retail tariff rates until Resolute is transferred to NTUA even though the PSA may  
81 be in effect with regard to providing power to NTUA for service to other  
82 transferred customers. However, once Resolute is transferred to NTUA, the  
83 Company will no longer provide service to Resolute. At that time, NTUA will  
84 provide service to Resolute.

85 **Q. What is the current demand and energy requirement of customers that will**  
86 **be transferred to NTUA?**

87 A. In 2014, the maximum load of customers served by the Company within the  
88 Nation was 40.86 MW and their energy consumption was 286,235 MWh.  
89 Resolute accounted for the lions' share of this demand and usage.

90 **Q. What is the anticipated demand?**

91 A. The Company has been in discussions with Resolute over the past few years  
92 regarding its plans to significantly increase the scope of its operations in the

93 Aneth Oil Field. Resolute has anticipated that its demand would increase. In  
94 addition, the Company has anticipated some modest growth in the demands of  
95 other customers within the Nation.

96 **Q. How does the PSA address this anticipated increase in demand?**

97 A. To the extent the increase in demand is associated with increased demand of  
98 Resolute during the period before Resolute is transferred to NTUA, the Company  
99 will deal directly with Resolute under its existing Master Electric Service  
100 Agreements (“MESAs”) with Resolute and applicable regulations. Mr. Morse  
101 describes the MESAs in his testimony. To the extent the increase results from  
102 other customers or from Resolute after NTUA assumes service to Resolute, the  
103 PSA provides that NTUA shall not connect any new large single load with a  
104 capacity greater than one MW, other than the transfer of Resolute’s load to  
105 NTUA, without PacifiCorp’s prior consent. In addition, NTUA is required to  
106 provide PacifiCorp with at least one-year’s advance notice of any increase or  
107 decrease in demand greater than one MW. PacifiCorp is not obligated to serve any  
108 aggregated load over the present interconnection capacity, except that NTUA may  
109 increase the total aggregate load to [REDACTED] subject to completion of all necessary  
110 studies, agreements and transmission system improvements at NTUA’s expense  
111 pursuant to the terms and conditions of Regulation 12.

112 **Q. Does the Company anticipate that it will have any problem in handling this**  
113 **potential increased load?**

114 A. No. The Company has already been working with Resolute with regard to its  
115 anticipated increased load and would have been required to provide the increased

116 load associated with Resolute and other customers within the Nation absent the  
117 PTA and PSA.

118 Q. [REDACTED]

119 [REDACTED]?

120 A. [REDACTED]

121 [REDACTED]

122 [REDACTED]

123 [REDACTED]

124 [REDACTED]

125 [REDACTED]

126 [REDACTED]

127 [REDACTED]

128 [REDACTED]

129 [REDACTED]

130 [REDACTED].

131 Q. [REDACTED]

132 [REDACTED]?

133 A. [REDACTED]

134 [REDACTED]

135 [REDACTED]

136 [REDACTED]

137 [REDACTED]

138 [REDACTED]

139 [REDACTED]  
140 [REDACTED]  
141 [REDACTED].  
142 Q. [REDACTED]  
143 [REDACTED]?  
144 A. [REDACTED]  
145 [REDACTED]  
146 [REDACTED]  
147 [REDACTED]  
148 [REDACTED]  
149 [REDACTED]  
150 [REDACTED]  
151 [REDACTED]  
152 [REDACTED]  
153 [REDACTED]  
154 [REDACTED]  
155 [REDACTED]  
156 [REDACTED]  
157 [REDACTED]  
158 [REDACTED].

159 Q. Is the Company obligated to provide power to NTUA beyond the term of  
160 the PSA?

161 A. No. However, the parties have agreed in the PSA that either of them may

162 commence negotiations for a firm energy contract for a term of up to five years  
163 not later than three years prior to expiration of the PSA and three years prior to  
164 the proposed effective date of the firm energy contract. If they are successful in  
165 negotiating such a contract and if its term commences earlier than expiration of  
166 the PSA, the PSA will terminate on the effective date of the firm energy  
167 contract. Neither party is obligated to enter into a new agreement.

168 **Q. Please comment on the other terms and conditions in the PSA.**

169 A. The PSA includes other terms and conditions similar to those in the Company's  
170 other power supply agreements. These terms and conditions address issues such  
171 as delivery points, the parties' obligations with respect to maintenance and  
172 operation of facilities and other matters.

173 **Public Interest**

174 **Q. Is the PSA in the public interest?**

175 A. Yes. The PSA assures that the Company's customers within the Nation, including  
176 Resolute, will have the opportunity to have a reasonably priced power supply for  
177 many years. It also provides a benefit to the Company and its other customers by  
178 allowing the Company to retain the load that has partially justified its investment  
179 in facilities in the area for a reasonable period of time.

180 **Conclusion**

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

182 A. The PSA was the product of extensive and difficult negotiations between the  
183 Company and NTUA. It represents part of a carefully balanced compromise of

184 complex issues that must be viewed in its entirety. Approval of the PSA is in the  
185 public interest for the reasons stated above.

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

187 A. The Company recommends that the Commission approve the PSA as part of the  
188 transaction agreed upon between the Company and NTUA.

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

190 A. Yes.



Rocky Mountain Power  
Docket No. 15-035-\_\_\_  
Witness: Steven R. McDougal

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**REDACTED – PUBLIC VERSION**  
Direct Testimony of Steven R. McDougal

December 2015

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 Steven R. McDougal. My business address is 1407 West North  
5       Temple Street, Suite 330, Salt Lake City, Utah 84116. My present position is  
6       Director of Revenue Requirement for PacifiCorp.

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

8    A.    I received a Bachelor of Science degree in Accounting and a Master of  
9       Accountancy degree from Brigham Young University with an emphasis in  
10      Management Advisory Services. I have also attended various educational,  
11      professional, and electric-industry related seminars in connection with my  
12      employment.

13           I have been employed with PacifiCorp and its predecessor, Utah Power  
14      and Light Company (“UP&L”), since 1983. My experience includes various  
15      positions with regulation, finance, resource planning and internal audit. My  
16      primary responsibilities currently include overseeing the calculation and reporting  
17      of the Company’s regulated earnings or revenue requirement, assuring that the  
18      interjurisdictional cost allocation methodology is correctly applied, and  
19      explaining these calculations to regulators in the jurisdictions in which the  
20      Company operates.

21   **Q.    Have you previously testified before this Commission or other state public**  
22       **utility commissions?**

23   A.    Yes. I have provided testimony in many dockets before this Commission. I have

24 also provided testimony before the California, Idaho, Oregon, Washington and  
25 Wyoming public utility commissions.

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

27 A. The purpose of my testimony is to support approval by the Commission of the  
28 Application for Approval of Purchase and Transfer Agreement and Power Supply  
29 Agreement and Amendment of Certificate of Public Convenience and Necessity  
30 (“Application”) filed with this testimony. In particular, my testimony describes  
31 regulatory treatment of the transaction associated with the Purchase and Transfer  
32 Agreement (“PTA”) and the Power Sales Agreement (“PSA”) entered into  
33 between the Company and the Navajo Tribal Utility Authority (“NTUA”). The  
34 PTA is Confidential Exhibit RMP\_\_\_\_(LPM-1) to the testimony of Mr. Loren P.  
35 (“Lucky”) Morse filed in support of the Application, and the PSA is Exhibit N to  
36 the PTA. As explained in Mr. Morse’s testimony, both agreements have been  
37 amended, but the amendments do not affect the issues discussed in my testimony.

38 **Summary of Testimony**

39 **Q. Please summarize your testimony.**

40 A. Rocky Mountain Power’s current sales of power to customers within the Navajo  
41 Nation are treated for interjurisdictional cost allocation purposes like sales to  
42 other customers in Utah for purposes of determining the Company’s revenue  
43 requirement in Utah and other states. Revenues and distribution investment and  
44 expenses for serving such customers have been assigned to Utah on a situs basis.  
45 The agreements were negotiated in order to treat Utah customers and other  
46 Company customers in a fair and reasonable manner.

47           In addition, there are certain aspects of the PTA under which the Company  
48           may make payments to NTUA. The Company cannot proceed with the transaction  
49           if it does not have assurance that those payments will be recoverable in its rates  
50           from Utah customers. Therefore, I will explain why those payments, if they are  
51           necessary, should be subject to recovery and why the Commission should indicate  
52           in approving the PTA that payments made pursuant to the PTA are prudent and  
53           the Company will be allowed to recover the payments from Utah customers.

54   **Background**

55   **Q.    Please briefly describe the Company's service to customers within the**  
56           **Nation.**

57   A.    As explained in more detail in the testimony of Mr. Morse, the Company, and its  
58           predecessor, UP&L, have provided service to customers within the portion of the  
59           Nation in San Juan County, Utah, for many years. This service has been provided  
60           with the consent of the Nation and pursuant to the Company's tariffs and  
61           regulations reviewed and approved by the Commission utilizing easements  
62           obtained from the Nation. Most of the service is to residential and small  
63           commercial customers. However, service to the largest customer, Resolute  
64           Natural Resources Company, LLC ("Resolute"), and its predecessors has been  
65           provided under the Company's Schedule 9.

66   **Q.    How have the Company's investments, revenues and expenses associated**  
67           **with providing this service been treated by this Commission?**

68   A.    They have been treated the same as the Company's investments, revenues and  
69           expenses associated with service to any other customers in the state of Utah. As a

70 result, revenues and distribution investment and expenses have been assigned to  
71 Utah on a situs basis. The loads of customers within the Nation have been  
72 included in the Utah jurisdiction, impacting allocation factors and the allocation  
73 of system related costs.

74 **Q. How have they impacted rates in other jurisdictions?**

75 A. The revenues and situs distribution related investments and expenses have been  
76 treated as Utah amounts and are not allocated to other states. The loads have been  
77 included in the Utah jurisdiction, impacting allocation factors and the allocation  
78 of system related costs. The Company is proposing to continue this treatment to  
79 keep other states from being impacted by this transaction.

80 During the term of the PSA, there will be no significant changes to current  
81 interjurisdictional cost allocations. Revenues, costs and loads associated with the  
82 sale of assets and transfer of customers to NTUA pursuant to the PTA and with  
83 the sale of power to Resolute or to NTUA pursuant to the PSA will be situs-  
84 assigned to Utah during the term of the PSA.

85 **Changes Resulting from the Transaction**

86 **Q. Please describe the changes that will result from the transaction?**

87 A. As a result of consummation of the PTA, Rocky Mountain Power will convey title  
88 to the facilities used to provide service to customers within the Navajo Nation to  
89 NTUA [REDACTED]. In addition, under the PSA, the Company is expected to  
90 continue to provide power to NTUA to serve those customers for a period of ten  
91 years through a service equivalent to Schedule 9 service under the Utah tariff.

92 **Q. What is the implication of this change for ratemaking in Utah?**

93 A. [REDACTED]

94 [REDACTED]

95 As the transfer of facilities and customers takes place over time, the  
96 Company's expenses to serve the customers within the Nation will decline and  
97 eventually disappear. A small portion of its revenues will also be gradually  
98 converted from revenues under Schedules 1, 6 and 23 (residential and small  
99 commercial) to revenues under Schedule 9. Because the vast majority of revenues  
100 realized from sales to customers within the Nation are already on Schedule 9, this  
101 change should also not have a significant effect.

102 The concern is that parties may advocate before the Commission that the  
103 Commission should ignore the fact that the sales are Schedule 9 equivalent and  
104 treat them as system sales for purposes of ratemaking, thus requiring a portion of  
105 the revenues and costs associated with the sales to be allocated to other  
106 jurisdictions.

107 **Q. Why shouldn't the sales be considered as system sales and be allocated**  
108 **among all of the Company's jurisdictions?**

109 A. The transaction is the result of an agreement entered into by the Company's  
110 predecessor, UP&L, over 50 years ago. The agreement was required by a  
111 governmental entity to allow UP&L to continue to provide service to customers in  
112 Utah within the governmental entity's jurisdiction. Thus, the agreement was  
113 similar to a franchise agreement with a municipality in Utah. There is no reason  
114 that other jurisdictions should be affected by such an agreement.

115 **Q. Will consummating the PTA and providing power to NTUA under the PSA**  
116 **be disadvantageous to Utah customers?**

117 A. No. The agreements were negotiated in order to treat Utah customers and other  
118 Company customers in a fair and reasonable manner. For example, sales to  
119 NTUA under the PSA are at Schedule 9 equivalent rates and will continue to be  
120 treated as Utah revenues and loads. Therefore, Utah customers will not be harmed  
121 because this treatment will continue for the balance of the term of Resolute's  
122 MESAs and thereafter so long as Schedule 9 equivalent sales are made. NTUA  
123 will also share in some of the benefits through payments [REDACTED]  
124 [REDACTED]  
125 [REDACTED]  
126 [REDACTED]. Because these payments are part of the consideration for the overall  
127 transaction, it is fair and reasonable to find the agreements in their entirety  
128 prudent and provide assurance to the Company that it will be able to recover  
129 payments made to NTUA pursuant to the agreements in Utah rates if it is required  
130 to pay them.

131 **Q. Why should the Company be entitled to recover payments it is required to**  
132 **make [REDACTED]?**

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

138 [REDACTED]  
139 [REDACTED]  
140 [REDACTED]  
141 [REDACTED]  
142 [REDACTED]  
143 [REDACTED]  
144 [REDACTED]  
145 [REDACTED]  
146 [REDACTED]  
147 [REDACTED]  
148 [REDACTED]  
149 [REDACTED]  
150 [REDACTED]

151 **Q. If the Company is required to pay amounts to NTUA [REDACTED]**  
152 [REDACTED]  
153 [REDACTED], should the Company be allowed  
154 to recover those expenses in rates?

155 **A.** Yes. The Company's agreement to make these payments, if necessary, is part of  
156 the consideration for the PTA. Since the PTA is in the public interest, the  
157 Company should be allowed to recover these costs in its Utah rates if it is required  
158 to make them. In addition, if this transaction did not take place and the Company  
159 incurred these costs in its continuing operation of its system, it would be entitled  
160 to recover them in its Utah rates.



161 **Q. What if the Company and NTUA enter into a firm energy contract during**  
162 **the term of the PSA? Does the Company require that the Commission**  
163 **provide some assurance that costs and revenues from such a contract will**  
164 **be Utah situs?**

165 A. No. If the Company and NTUA enter into a firm energy contract based on market  
166 prices for power, such a contract would truly be a wholesale type contract and  
167 should be treated the way other contracts of that sort are treated in the Company's  
168 ratemaking among its various jurisdictions. The Company has structured the  
169 transaction as it has in light of the terms of the Letter Agreement and in an effort  
170 to provide a reasonable transition period. Once that transition period is over,  
171 NTUA will likely no longer be a Schedule 9 equivalent customer. If not, there is  
172 no need that it be treated as if it were one.

173 **Conclusion**

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

175 A. The Company has carefully structured the transaction to assure that other Utah  
176 customers will not be harmed by it. It is fair and appropriate that the transaction  
177 be treated in the manner discussed above in my testimony for ratemaking  
178 purposes. The PTA and PSA are the product of extensive and difficult  
179 negotiations between the Company and NTUA. They represent a carefully  
180 balanced compromise of complex issues and must be viewed together and in their  
181 entirety. Approval of the transaction is in the public interest and the ratemaking  
182 treatment proposed by the Company is just and reasonable.

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

184   A.     The Company recommends that the Commission approve the transaction agreed  
185           upon between the Company and NTUA and provide assurance that in so doing it  
186           is approving the ratemaking treatment of the transaction discussed in my  
187           testimony.

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

189   A.     Yes.

Rocky Mountain Power  
Docket No. 15-035-\_\_\_  
Witness: Walter W. Haase

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

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**REDACTED – PUBLIC VERSION**  
Direct Testimony of Walter W. Haase

December 2015

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

2    **Q.     Please state your name, business address and present position.**

3    A.     My name is Walter W. Haase. My business address is P.O. Box 170, Fort  
4           Defiance, Arizona 86504. My present position is General Manager for the Navajo  
5           Tribal Utility Authority (“NTUA”).

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

7    A.     I have a Bachelor of Science degree in Electrical Engineering from the University  
8           of Illinois and a Master of Business Administration degree from the Keller  
9           Graduate School of Management located in Chicago, Illinois. I am a professional  
10          engineer licensed in the states of Illinois and North Carolina. I also have a Gas  
11          Pipeline Operator’s license from the United States Department of Transportation.  
12          I have been employed with NTUA as General Manager since 2008. Prior to  
13          joining NTUA, I was General Manager of the Board of Public Utilities in the City  
14          of Jamestown, New York from 2000 to 2008. I have served in senior level  
15          management positions in the electric utility industry for over 23 years.

16   **Q.     Have you previously testified before the Public Service Commission of Utah**  
17          **(“Commission”) or other state commissions?**

18   A.     Yes. I have provided testimony before the New York Public Service Commission.

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

20   A.     The purpose of my testimony is to support approval by the Commission of the  
21          Application for Approval of Purchase and Transfer Agreement and Power Supply  
22          Agreement and Amendment of Certificate of Public Convenience and Necessity  
23          (“Application”) filed with this testimony. In particular, my testimony describes

24 NTUA and explains why the transaction is in the interests of customers within the  
25 Navajo Nation.

26 **Summary of Testimony**

27 **Q. Please summarize your testimony.**

28 A. NTUA is an enterprise of the Navajo Nation. It was created by the Navajo Nation  
29 Council in 1959 to provide utility services to residents of the Nation. Following  
30 the creation of NTUA, Rocky Mountain Power's predecessor, Utah Power &  
31 Light Company ("UP&L"), entered into a letter agreement with the Navajo  
32 Nation Council ("Letter Agreement"). A copy of the Letter Agreement is Exhibit  
33 D to the Purchase and Transfer Agreement ("PTA") which is attached as  
34 Confidential Exhibit RMP\_\_\_\_(LPM-1) to the confidential testimony of Mr. Loren  
35 P. ("Lucky") Morse. In the Letter Agreement, UP&L agreed that the Nation  
36 would have an option to purchase certain facilities serving customers within the  
37 Nation at net book value and negotiate to purchase other facilities.

38 In 2009, NTUA commenced discussions with PacifiCorp dba Rocky  
39 Mountain Power ("the Company") regarding acquisition of the Company's  
40 facilities within the Nation. The parties pursued discussions and negotiations in  
41 good faith, addressing and ultimately resolving a number of difficult issues. On  
42 December 4, 2013, the parties entered into the PTA and a Power Supply  
43 Agreement ("PSA"), which is attachment N to the PTA, subject to approval of the  
44 Navajo Nation Council and the Commission and other necessary approvals.

45 The parties entered into a First Amendment to the Purchase and Transfer  
46 Agreement ("First Amendment to PTA") and a First Amendment to the Power

47 Supply Agreement (“Amendment to PSA”) dated March 4, 2015, based on  
48 modifications to the Navajo Nation Council Resolution attached as Exhibit K to  
49 the PTA. The First Amendment to PTA is Confidential Exhibit RMP\_\_\_\_(LPM-2)  
50 to Mr. Morse’s testimony. The Amendment to PSA is Confidential Exhibit  
51 RMP\_\_\_\_(LPM-4) to Mr. Morse’s testimony. As a result of a number of factors  
52 and circumstances, the planned schedule for seeking approval of the transaction,  
53 closing of the PTA and completion of the separation plan needed to be modified.  
54 The parties entered into a Second Amendment to the Purchase and Transfer  
55 Agreement (“Second Amendment to PTA”) dated December 2, 2015, to modify  
56 the dates by which the parties must take certain actions and to clarify how service  
57 to customers outside the Nation that the parties agree would currently be better  
58 served by NTUA will be handled. The Second Amendment to PTA is  
59 Confidential Exhibit RMP\_\_\_\_(LPM-3) to Mr. Morse’s testimony.

60 Approval of the Application is in the public interest. The PTA and PSA  
61 fulfill the Company’s obligations in the Letter Agreement in a fair and reasonable  
62 manner. Consummation of the agreements will allow NTUA to provide electric  
63 service to customers within the portion of the Nation in San Juan County, Utah.  
64 As an enterprise of the Nation, NTUA is obligated to extend service to as many  
65 members of the Nation as reasonably possible consistent with the Nation’s  
66 policies and goals. Although the Company has provided service to many  
67 customers within the Nation in southeastern Utah, it has been limited in its ability  
68 to extend service to certain customers in outlying regions by the fact that it was  
69 required to comply with line extension policies of this Commission and to obtain

easements from the Nation. Many customers simply do not have the means to afford line extensions, and obtaining grants from the Nation to satisfy line extension requirements and acquisitions of easements on Tribal lands is a complex and time-consuming process. As a subdivision of the Nation, NTUA will be able to extend service to more customers and to obtain easements more readily. Furthermore, with the PSA, NTUA is assured that it will have the opportunity to have an adequate source of reasonably priced power to the customers for many years.

NTUA is an experienced and qualified provider of electric service, particularly in the conditions encountered within the Nation. Following the transfer of customers, the Council has authorized NTUA to charge smaller customers rates comparable to those that would have been charged by the Company for a reasonable transition period, until such time as NTUA adopts new rates in accordance with its regulatory authority under Navajo law, and to negotiate rates to be paid by large users. In addition, NTUA will provide service to the handful of customers located outside but adjacent to the Nation who will be transferred to it on the same terms and conditions that it provides service to similarly situated customers within the Nation. For these reasons, NTUA requests that the Commission approve the Application.

## **Background**

### **Q. Please describe NTUA.**

A. In 1959, the Nation created NTUA as a department of the Nation and authorized it to provide public utility services throughout the Nation. In 1965, the Nation

reorganized NTUA as an independent enterprise and subdivision of the Nation. Since that time, NTUA has developed and acquired utility assets to provide electric, communication, natural gas, renewable energy, water and waste water utility services within the Nation. It currently provides these utility services in most of the parts of the Nation.

NTUA currently serves approximately 39,600 electric customers who are spread out over a 27,000 square mile service territory. It employs approximately 720 individuals, 97 percent of whom are of Navajo descent. NTUA is the largest multi-utility owned and operated by an American Indian Tribe. NTUA's capital investments for electric service are financed through the Rural Utility Service of the United States Department of Agriculture ("RUS"). Thus, NTUA has access to available capital at reasonable costs and has secured financing for this acquisition.

NTUA's operations are overseen by a Management Board composed of seven individuals, all of whom are experienced in the utility industry and/or have strong ties to the Nation. The members of the Management Board are appointed by the Navajo Nation Resources and Development Committee and one of its members is a member of the Navajo Nation Council.

**Q. When the Nation required UP&L to enter into the Letter Agreement in 1959 as a condition to obtaining easements to continue to provide service within the Nation, did the Nation intend that NTUA would eventually acquire the Company's system?**

**A.** Yes. When the Nation created NTUA in 1959, it did so with the intent that utility services within the Nation would eventually be provided by an enterprise of the



116 Nation subject to the policies and goals of the Nation.

117 **Q. Has NTUA previously attempted to acquire the Company's system?**

118 A. Yes. NTUA approached UP&L regarding the possible exercise of its option to  
119 acquire facilities of the Company used to provide service to customers within the  
120 Nation pursuant to the terms of the Letter Agreement several times in the past.  
121 None of these approaches resulted in NTUA's acquisition of any Company  
122 facilities. Although I was not with NTUA at the time of these earlier approaches, I  
123 believe this result was at least in part attributable to disagreements between the  
124 Company and NTUA regarding interpretation and application of the Letter  
125 Agreement.

126 **Q. What is different this time?**

127 A. NTUA now has a clear mandate from the Nation to acquire the Company's  
128 system and is in a strong position financially to proceed with the acquisition at  
129 this time. Also, the easements granted just after the Letter Agreement was signed  
130 were beginning to expire. In addition, NTUA and the Company were both  
131 committed to work creatively and cooperatively to address their differences  
132 regarding the meaning of the Letter Agreement in a way that would not  
133 disadvantage either party and in addressing the other issues related to the  
134 acquisition. Over a period of approximately four years, the parties were able to  
135 address and resolve their differences and these issues in a positive and productive  
136 way. The negotiations were complex and difficult, but were ultimately successful.

137    **The Agreements**

138    **Q.     Please briefly describe the PTA and PSA.**

139    A.     The PTA and PSA are described in the confidential testimony of Mr. Morse and  
140           Mr. Paul H. Clements. Therefore, I will not describe them in any detail. However,  
141           I will highlight certain terms and conditions of the agreements.

142           The PTA provides that NTUA will acquire the facilities of the Company  
143           within the Nation for [REDACTED]

144           [REDACTED]

145           [REDACTED]

146           NTUA has agreed in the PTA to reimburse the Company for its expenses  
147           incurred in undertaking the transaction as described in Mr. Morse’s confidential  
148           testimony [REDACTED]. In that  
149           regard, I should note that NTUA does not anticipate at this time that any upgrades  
150           of the Company’s facilities to meet RUS standards will be required. NTUA has  
151           also agreed to include in the purchase price a pro-rated share of property taxes to  
152           be paid by the Company and any tax effects of the transaction and to pay any  
153           transfer fees associated with the transaction.

154           [REDACTED]

155           [REDACTED]

156           [REDACTED]

157           [REDACTED]

158           [REDACTED]

159           [REDACTED]

160 [REDACTED]

161 [REDACTED]

162           It is anticipated that the sale of facilities and transfer of customers may  
 163 take place in up to three steps depending on when the first closing occurs in  
 164 relation to Resolute Natural Resources Company, LLC’s (“Resolute”) completion  
 165 of a transmission line and related facilities enabling it to receive power from the  
 166 Company at Resolute’s Aneth, McElmo and Ratherford Substations and the  
 167 expiration of the Company’s Master Electric Service Agreements (“MESAs”)  
 168 with Resolute. These steps are described in more detail in Mr. Morse’s testimony.

169           Under the PSA, NTUA may acquire power from the Company at Schedule  
 170 9 equivalent service for a period of ten years. This will allow NTUA to provide  
 171 power to the customers being transferred to it on approximately the same terms as  
 172 the Company is currently providing power to those customers.

173 **Q. Please explain the terms and conditions on which NTUA proposes to**  
 174 **provide service to the customers transferred to it.**

175 A. The Council has authorized NTUA to charge smaller customers rates comparable  
 176 to those that would have been charged by the Company for a reasonable transition  
 177 period, until such time as NTUA adopts new rates in accordance with its  
 178 regulatory authority under Navajo law, and to negotiate rates to be paid by large  
 179 users. As an enterprise of the Nation, NTUA is motivated to serve customers in  
 180 the most efficient and reasonable manner possible and at the lowest prices  
 181 possible. In that respect, NTUA is not a for-profit entity.

182 **Q. How can the Commission be assured that the fourteen customers not**  
183 **within the boundaries of the Nation that will be transferred to NTUA will**  
184 **be treated fairly?**

185 A. NTUA has agreed to serve these customers because they are already served from  
186 facilities located within the Nation that will be transferred to NTUA. The  
187 Company believes it is impractical at this time to build completely separate  
188 facilities to provide service to these fourteen customers. NTUA has agreed that it  
189 will treat these customers in the same manner that it treats similarly situated  
190 customers within the Nation. This agreement includes rates and charges, including  
191 rebates or refunds, and other terms and conditions of service. NTUA has also  
192 agreed to provide these customers with a dispute resolution process. Therefore,  
193 these customers will have the same protections as similarly situated customers  
194 within the boundaries of the Navajo Nation.

195 **Q. Is it possible that NTUA will serve additional customers located outside the**  
196 **boundaries of the Navajo Nation?**

197 A. Yes. If any additional customer requests service from NTUA, if NTUA is willing  
198 to provide the service, and if Rocky Mountain Power agrees that NTUA may  
199 provide the service and obtains approval from the Commission, NTUA will  
200 provide service to the customer.

201 **Q. Is it possible that the customers outside the boundaries of the Nation served**  
202 **by NTUA may be transferred back to the Company?**

203 A. Yes. At some point in the future if the Company wishes and is able to install  
204 facilities to serve these customers directly, NTUA has agreed that it will transfer

205 the customers back to the Company within six months after notice and receipt of  
206 payment for NTUA's facilities dedicated to serving the customers [REDACTED]  
207 [REDACTED]. These transfers will be done in a manner that minimizes  
208 disruption of service to the customers. NTUA will continue to provide service to  
209 the customers until the transfer takes place.

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

211 A. NTUA sought the PSA consistent with its long-term needs and to provide some  
212 assurance that it would have power immediately available to serve the customers,  
213 and particularly Resolute, at prices consistent with the prices the Company was  
214 providing service to the customers.

215 The Company recognized that continued service to Resolute during the  
216 term of the MESAs and continued provision of power to NTUA at Schedule 9  
217 equivalent rates for a period of time would provide a significant benefit to the  
218 Company's other customers.

219 UP&L and the Navajo Nation entered into the Letter Agreement based  
220 upon the structure of the electric utility industry at that time. The industry has  
221 changed dramatically since then. The compromise that the parties struck in the  
222 PSA is consistent with today's structure of the electric utility industry. I believe  
223 the PSA is in the interest of both utilities and their respective customers.

224 [REDACTED]  
225 [REDACTED]  
226 [REDACTED]  
227 [REDACTED]

228 [REDACTED]

229 [REDACTED]

230 [REDACTED]

231 [REDACTED]

232 [REDACTED]

233 [REDACTED]

234 [REDACTED]

235 [REDACTED]

236 [REDACTED]

237 [REDACTED]

238 [REDACTED]

239 [REDACTED]

240 [REDACTED]

241 [REDACTED]

242 [REDACTED]

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252 [REDACTED]

253 [REDACTED]

254 [REDACTED]

255 [REDACTED]

256 [REDACTED]

257 [REDACTED]

258 [REDACTED]

259 [REDACTED]

260 [REDACTED]

261 [REDACTED]

262 [REDACTED]

263 [REDACTED]

264 [REDACTED]

265 [REDACTED]

266 [REDACTED]

267 [REDACTED]

268 [REDACTED]

269 [REDACTED]

270 [REDACTED]

271 [REDACTED]

272 **Q. Please describe the approval of the NTUA Management Board of the**  
273 **agreements.**

274 A. The Management Board adopted a resolution approving the agreements on  
275 August 23, 2013. In that resolution, the Management Board granted a limited  
276 waiver of sovereign immunity to the Company with respect to the agreements.  
277 This is significant because as an enterprise of the Nation, NTUA has sovereign  
278 immunity and cannot be sued except under certain limited conditions. With this  
279 waiver, the Company will be able to enforce the agreements and resolve any  
280 dispute regarding them in accordance with the dispute resolution provisions in the  
281 agreements. The Management Board submitted the resolution to the Speaker of  
282 the Navajo Council on September 11, 2013, and the waiver became effective on  
283 October 11, 2013, in accordance with Navajo Nation Council Resolution No.  
284 CAP-18-10. A copy of Navajo Nation Council Resolution No. CAP-18-10 is  
285 attached to my testimony as Exhibit RMP\_\_\_\_(WWH-2).

286 The Management Board adopted a resolution approving the First  
287 Amendment to PTA and the Amendment to PSA on February 26, 2015. The  
288 Management Board also adopted a resolution approving the Second Amendment  
289 to PTA.

290 **Q. Please describe the approval of the agreements by the Council.**

291 A. The Council approved the Resolution as modified by the First Amendment to  
292 PTA on May 19, 2015. The Resolution was certified on May 27, 2015. A copy of  
293 the Resolution and all of the accompanying Chapter and Department approvals  
294 are attached to my testimony as Confidential Exhibit RMP\_\_\_\_(WWH-1).



295     **Public Interest**

296     **Q.     What are the benefits of the transaction to the Navajo Nation?**

297     A.     The PTA and PSA fulfill the Company's obligations in the Letter Agreement in a  
298             fair and reasonable manner. As the PTA is closed and the PSA becomes effective,  
299             NTUA will be able to provide electric service to customers within the portion of  
300             the Nation in San Juan County, Utah, consistent with the Nation's policies and  
301             goal. The Company's ability to serve certain customers in outlying regions within  
302             the Nation in southeastern Utah has been limited by the fact that it was required to  
303             comply with line extension policies of this Commission and to obtain easements  
304             from the Nation. Many customers simply do not have the means to afford line  
305             extensions, and obtaining grants from the Nation to satisfy line extension  
306             requirements and acquisitions of easements on Tribal lands is a complex and  
307             time-consuming process. As a subdivision of the Nation, NTUA will be able to  
308             extend service to more customers and to obtain grants and easements more  
309             readily. The PSA assures NTUA that it will have an adequate source of  
310             reasonably priced power to serve the transferred customers for many years.

311     **Conclusion**

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

313     A.     The PTA and PSA are the product of extensive and difficult negotiations between  
314             the Company and NTUA. They represent a carefully balanced compromise of  
315             complex issues and must be viewed together and in their entirety. They resolve  
316             the long-standing issues related to the Letter Agreement in a manner that is

317           satisfactory to both parties. Their approval is in the public interest for the reasons  
318           stated above.

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

320   A.     NTUA recommends that the Commission approve the Company's Application.

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

322   A.     Yes.

**CONFIDENTIAL**

Rocky Mountain Power

Exhibit RMP\_\_\_\_(WWH-1)

Docket No. 15-035-\_\_

Witness: Walter W. Haase

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

---

**CONFIDENTIAL**

Exhibit Accompanying Direct Testimony of Walter W. Haase

The Resolution of the Resources and Development Committee of the  
23<sup>rd</sup> Navajo Nation Council – First Year, 2015

December 2015

**THIS EXHIBIT IS CONFIDENTIAL  
AND IS PROVIDED UNDER  
SEPARATE COVER**

Rocky Mountain Power  
Exhibit RMP\_\_\_\_(WWH-2)  
Docket No. 15-035-\_\_\_\_  
Witness: Walter W. Haase

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

---

Exhibit Accompanying Direct Testimony of Walter W. Haase

Navajo Nation Council Resolution No. CAP-18-10

December 2015

CAP-18-10

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

21<sup>st</sup> NAVAJO NATION COUNCIL - Fourth Year 2010

AN ACT

RELATING TO GOVERNMENT SERVICES AND ECONOMIC DEVELOPMENT;  
AMENDING THE PLAN OF OPERATION FOR THE NAVAJO TRIBAL UTILITY  
AUTHORITY AT 21 N.N.C. § 7(B) (14); AUTHORIZING THE NAVAJO  
TRIBAL UTILITY AUTHORITY MANAGEMENT BOARD TO GRANT WAIVERS OF  
THE AUTHORITY'S SOVEREIGN IMMUNITY

BE IT ENACTED:

Section One. Findings

A. The current national economic environment has made it more difficult for the Navajo Tribal Utility Authority to continue to provide services without the ability of the Authority to waive its own sovereign immunity from suit.

B. It is the Navajo Tribal Utility Authority's experience that counterparties in complex transactions are requiring the Authority to seek specific waivers of its sovereign immunity from the Navajo Nation Council which, due to timing difficulties, can jeopardize such transactions.

C. The Management Board of the Navajo Tribal Utility Authority recommends that the Navajo Nation Council approve amendments to the plan of operation for the Navajo Tribal Utility Authority at 21 N.N.C. § 7(B)(14) authorizing the Management Board to grant waivers of the Authority's sovereign immunity from suit. Resolution NTUA-26-09 is attached hereto as Exhibit A.

Section Two. Amending Title 21 of the Navajo Nation Code,  
21 N.N.C. §7(B) (14)

The Navajo Nation hereby amends Title 21 of the Navajo Nation Code, as follows:

---

NAVAJO NATION CODE ANNOTATED  
TITLE 21. PUBLIC UTILITIES AND COMMUNICATIONS

CAP-18-10

CHAPTER 1. NAVAJO TRIBAL UTILITY AUTHORITY  
SUBCHAPTER 1. GENERALLY

\* \* \* \*

§ 7. Management Board; purpose; duties and powers

\* \* \* \*

B. Enumerated powers. Subject to Navajo Nation Council approval where required, and applicable Navajo Nation and federal laws and regulations, and solely in furtherance of the limited purposes set forth in 21 N.N.C. § 5, the Management Board shall have the following powers:

\* \* \* \*

14. To sue or be sued. To bring suit in its name and, notwithstanding any legal limitations under the Navajo Sovereign Immunity Act, to participate in enforceable arbitration proceedings and to contractually waive immunity to suit in the courts of the Navajo Nation and any state or federal court having jurisdiction, provided that notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, the Management Board, upon 30 days written notice to the Speaker of the Navajo Nation Council of the intention of the Management Board to waive the Authority's sovereign immunity, may by resolution duly adopted waive the Authority's immunity from suit. Any such waiver shall be limited to the assets, revenue and income of the Authority, and shall not waive the sovereign immunity of the Navajo Nation nor extend liability to any assets, revenue, or income of the Navajo Nation.

\* \* \* \*

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Section Three. Effective Date

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

CAP-18-10

**Section Four. Codification**

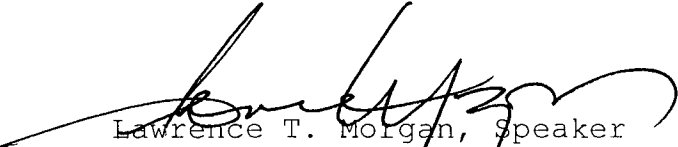
The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

**Section Five. Savings Clause**

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 59 in favor and 19 opposed, this 21<sup>st</sup> day of April 2010.

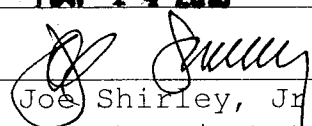
  
Lawrence T. Morgan, Speaker  
Navajo Nation Council

24 May 10  
Date

Motion: Amos Johnson  
Second: GloJean Todacheene

**ACTION BY THE NAVAJO NATION PRESIDENT:**

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this \_\_\_\_\_ day of MAY 14 2010 2010.

  
\_\_\_\_\_  
Dr. Joe Shirley, Jr., President  
Navajo Nation

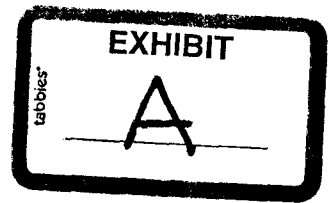


CAP-18-10

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this \_\_\_\_\_ day of \_\_\_\_\_ 2010 for the reason(s) expressed in the attached letter to the Speaker.

---

Dr. Joe Shirley, Jr., President  
Navajo Nation



**RESOLUTION OF THE  
MANAGEMENT BOARD OF THE  
NAVAJO TRIBAL UTILITY AUTHORITY**

NTUA-26-09

**Approving Amendments to the Plan of Operation of the  
Navajo Tribal Utility Authority and Requesting Approval  
of the Same by the Navajo Nation Council**

**WHEREAS:**

1. Pursuant to 21 N.N.C. § 7(A)(1), the Management Board of the Navajo Tribal Utility Authority ("the Authority") is authorized and responsible for the management and operation of the Authority; and
2. NTUA Management has recommended that the Authority's Plan of Operation codified at 21 N.N.C. § 1, *et seq.*, to authorize the NTUA Management Board to waive the Authority's sovereign immunity from suit; and
3. The current national economic environment has made it more difficult for the Authority to continue to provide its services without the ability of the Authority to waive its own sovereign immunity from suit. It is the Authority's experience that counterparties in complex transactions are requiring the Authority to seek specific waivers of its sovereign immunity from the Navajo Nation Council, which due to timing difficulties jeopardizes such transactions.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The Management Board of the Navajo Tribal Utility Authority hereby approves amendments to the Plan of Operation of the Navajo Tribal Utility Authority, codified at 21 N.N.C. § 1, *et seq.* The proposed amendments are attached hereto as Exhibit 1.
2. The Management Board further requests approval of the Authority's proposed Plan of Operation amendments set forth in Exhibit 1 by the Navajo Nation Council.

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered at a meeting of the Management Board of the Navajo Tribal Utility Authority in Dilkon, Arizona, at which a quorum was present and the same was duly approved by a vote of 4 in favor, 0 opposing, and 0 abstaining this 25<sup>th</sup> day of June 2009.

  
Sonny Clark, Secretary

EXHIBIT 1

14. To sue or be sued. To bring suit in its name and, notwithstanding any legal limitations under the Navajo Nation Sovereign Immunity Act, to participate in enforceable arbitration proceedings and to contractually waive immunity to suit in the courts of the Navajo Nation and any State or Federal court having jurisdiction, provided that notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, the Management Board, upon thirty days written notice to the Speaker of the Navajo Nation Council of the intention of the Management Board to waive the Authority's sovereign immunity, may by resolution duly adopted waive the Authority's immunity from suit. Any such waiver shall be limited to the assets, revenue and income of the Authority, and shall not waive the sovereign immunity of the Navajo Nation nor extend liability to any assets, revenue, or income of the Navajo Nation.



1/8/10 10:50 am  
*[Signature]*

NAVAJO TRIBAL UTILITY AUTHORITY  
AN ENTERPRISE OF THE NAVAJO NATION

January 7, 2010

Honorable Roy Laughter  
Council Delegate  
Chilchinbeto Chapter

Re: Navajo Tribal Utility Authority ~ Sponsorship of Legislations

Dear Mr. Laughter:

We are respectfully requesting your assistance in sponsoring the attached hereto two pieces of legislation on behalf of the Navajo Tribal Utility Authority. The co-sponsors are Ervin Keeswood and Mel R. Begay.

The first legislation seeks to amend NTUA's plan of operation to authorize the NTUA Management Board to approve limited waivers of NTUA's sovereign immunity.

The second legislation seeks to increase NTUA's borrowing authority from \$200 million to \$500 million.

NTUA would like to seek approval of the attached legislations at the 2010 Winter Session of the Navajo Nation Council. Should you have any questions, please contact our office at 729-6204.

Sincerely,

*[Signature: Bernice Tsosie]*

Bernice Tsosie  
Government Liaison

xc: Ervin Keeswood  
Mel R. Begay  
Walter W. Haase, NTUA General Manager



## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

January 6, 2010

Honorable President Joe Shirley, Jr.  
The Navajo Nation  
P.O. Box 9000  
Window Rock, AZ 86515

Re: Navajo Tribal Utility Authority  
Administrative Review of Proposed Legislation  
Amending NTUA's Plan of Operation

Dear Honorable President Shirley:

Enclosed for administrative review are two pieces of draft legislation seeking to amend the Plan of Operation of the Navajo Tribal Utility Authority (NTUA) such that (1) its Management Board would be authorized to grant limited waivers of NTUA's sovereign immunity and (2) NTUA's borrowing authority will be increased.

With respect to several projects that NTUA has undertaken and plans to undertake, including the Big Boquillas Wind Project, other wind generation projects, its New Markets Tax Credits financings, among numerous other day-to-day business transactions, NTUA has been requested by counterparties to seek a waiver of its sovereign immunity for enforcement of contractual obligations.

NTUA has had to forego valuable business opportunities in the past due to its inability to quickly obtain a sovereign immunity waiver. The NTUA Management Board is well aware of the situation and has therefore approved a Board Resolution, NTUA-26-09, requesting amendment of the NTUA Plan of Operation to authorize the Management Board to grant limited waivers of NTUA's sovereign immunity on case-by-case basis.

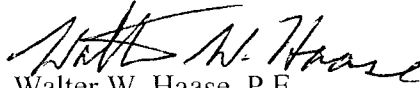
NTUA also plans to make significant investments intended to improve and expand NTUA's utility facilities as well as acquire new facilities to serve customers in Utah and the Western portions of the Navajo Reservation. NTUA's current outstanding borrowing plus new borrowing will easily exceed \$200 million, which is NTUA's current borrowing authority. NTUA wishes to increase its borrowing authority to \$500 million.

Honorable President Joe Shirley, Jr.  
Page Two  
January 6, 2010

Expedited review by the Executive Branch of the Navajo Nation is appreciated. NTUA would like to seek approval of the enclosed legislation at the 2010 Winter Session of the Navajo Nation Council.

Sincerely,

NAVAJO TRIBAL UTILITY AUTHORITY

  
Walter W. Haase, P.E.  
General Manager

WWH/mar

Enclosure

xc: Sidney Bob Dietz II, NTUA Management Board Chairperson  
Warren Denetsosie, NTUA Legal Counsel  
Bernice Tsosie, Government Liaison

21st Navajo Nation Council

Fourth Year 2010

Mr. Speaker,

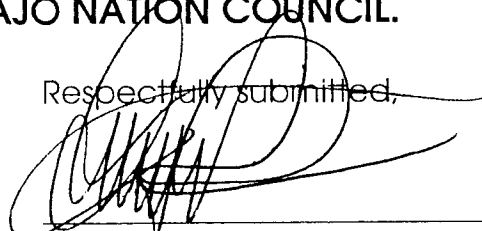
The **ETHIC AND RULES COMMITTEE**, to whom has been assigned

**NAVAJO LEGISLATIVE BILL 0032-10**

Has had it under consideration and reports the same with a **DO PASS** with **NO AMENDMENTS**.

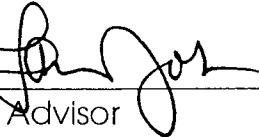
And therefore referred to the **21<sup>ST</sup> NAVAJO NATION COUNCIL**.

Respectfully submitted,



Francis Redhouse, Chairperson

Adopted: \_\_\_\_\_



Advisor

Not Adopted: \_\_\_\_\_

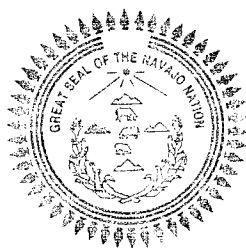
Advisor

Date: **February 19, 2010**

The vote was 6 in favor and 0 opposed

Excused:

Absent:



## 21st Navajo Nation Council - Third Year

Mr. Speaker

The **GOVERNMENT SERVICES COMMITTEE** to whom has been assigned

### NAVAJO NATION LEGISLATIVE BILL #0032-10

**Relating Government Services and Economic Development; Amending the Plan of Operation for the Navajo Tribal Utility Authority at 21 N.N.C. § 7 (B) (14); Authorizing the Navajo Tribal Utility Authority Management Board to Grant Waivers of the Authority's Sovereign Immunity**

Has had it under consideration and reports the same with the following recommendation that it **DO PASS** with no amendments.

And therefore referred to **ECONOMIC DEVELOPMENT COMMITTEE** respectfully submitted

  
Ervin M. Keeswood, Sr, Chairman  
GOVERNMENT SERVICES COMMITTEE

#### GSC SUMMARY:

Date: January 21, 2010

Adopted :

  
Mike Martinez, Legislative Advisor

Main Motion: Leonard Teller <sup>2nd</sup> Charles Damon

Vote 5 - 0



**ECONOMIC DEVELOPMENT COMMITTEE REPORT**  
**21<sup>st</sup> NAVAJO NATION COUNCIL – Fourth Year, 2010**

Mr. Speaker:

The **ECONOMIC DEVELOPMENT COMMITTEE**, to whom has been assigned:

**LEGISLATION NO. 0032-10**

Introduced by Hon. Roy Laughter

**AN ACTION**

Relating to Government Services and Economic Development; Amending the Plan of Operation for the Navajo Tribal Utility Authority at 21 NNC §7(B) (14); Authorizing the Navajo Tribal Utility Authority Management Board to Grant Waivers of the Authority's Sovereign Immunity

has had it under consideration and reports the same with a **DO PASS** with **NO AMENDMENTS**.

And thence referred to the **Ethics and Rules Committee**.

**CERTIFICATION**

I, hereby certify that the foregoing legislation was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed with a vote of **7 in favor and 0 opposed** this 3<sup>rd</sup> day of February 2010.

  
\_\_\_\_\_  
Mr. Lawrence R. Platero, Chairperson  
Economic Development Committee.

MOTION: GloJean Todacheene

SECOND: Tom LaPahe