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Attorneys for Intervenor Monsanto Company

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
ROCKY MOUNTAIN POWER FOR APPROVAL ) **Case No. PAC-E-10-07**  
OF CHANGES TO ITS ELECTRIC SERVICE )  
SCHEDULES AND A PRICE INCREASE OF )  
\$27.7 MILLION, OR APPROXIMATELY )  
13.7 PERCENT )  
\_\_\_\_\_ )

**BRIEF IN SUPPORT OF MOTION TO DISMISS OR STRIKE TESTIMONY**

COMES NOW Intervenor, Monsanto Company ("Monsanto"), through counsel, and hereby submits this Brief in support of its Motion to Dismiss or Strike Testimony of Paul J. Clements.

**STATEMENT OF MATERIAL FACTS**

Monsanto is the largest single-point customer on the PacifiCorp system in its six-state service area with an electrical load of just under 200 MW. On average, Monsanto consumes approximately 1.4 million MWH of electricity, roughly 42 percent of Rocky Mountain Power's ("Company's") Idaho jurisdictional load, contributing annual revenues exceeding \$42.4 million. Monsanto mines phosphate ore in eastern Idaho utilized at the Soda Springs plant to produce elemental phosphorus. Electricity is the largest single cost of producing phosphorus at Monsanto's Soda Springs plant. With three electric furnaces and approximately 20 MW of auxiliary load, of which 9 MW is firm, Monsanto's total load is approximately 182 MW.

Monsanto is a unique customer because it supplies 1,050 hours in three interruption options to provide operating reserves, system integrity, as well as economic curtailment to Rocky Mountain Power.

Monsanto has been a special contract customer of Rocky Mountain Power (PacifiCorp) and its predecessor, Utah Power and Light Company, since 1951. Except for 9 MW of firm load, Monsanto has always been an interruptible customer. The current electric service agreement, effective January 1, 2008, ("2008 Agreement"), was approved by the Commission's Order No. 30482, entered December 28, 2007, which approved a Stipulation offered as a proposed settlement of the rate issues in Case No. PAC-E-07-05. The Stipulation paragraph 33 and Order No. 30482, at page 8, stated:

"The curtailment valuation for Monsanto is based on a "black box" determination with no party accepting a specific methodology for setting this valuation."

The terms and conditions of the 2008 Agreement approved by the Commission, including the monthly charge for firm power and energy and interruptible power and energy are set forth in Electric Service Schedule No. 400.

### **APPLICATION OF ROCKY MOUNTAIN POWER**

On May 28, 2010, Rocky Mountain Power filed the Application of Rocky Mountain Power For Approval of Changes to Its Electric Service Schedules and a price increase of \$27.7 million, or approximately 13.7 percent ("Application"). The proposed increase to Monsanto's contract Schedule 400 was 19.6 percent, the largest of any customer.

In recognizing the value of Monsanto's interruptible products, this Commission has recognized their importance in establishing the net rate to Monsanto in the future and directed the parties to address interruptible product valuation in a general rate case.

In Order No. 30197 entered December 18, 2006, in Case No. PAC-E-0609, the Commission stated:

"The Commission also recognizes that the value of interruptible products furnished by Monsanto, as well as Monsanto's cost of service, will be important considerations in establishing the net rate to Monsanto in the future. Consequently, we expect the parties to address interruptible product valuation in

the context of a general rate case when Monsanto's cost of service is determined."

Notwithstanding this clear directive from the Commission, Rocky Mountain Power inexplicably failed to address in its direct testimony any discussion regarding any decrease to the value of the interruptible products. The Application included the existing value for interruptible products provided to the Company as a component of the total net power costs. The Application presented no testimony, exhibits, or work papers presenting or proposing any decrease to the interruptible credit value established by the parties as a "black box" settlement in the last case. Case No. PAC-E-07-05. Nor did Rocky Mountain Power present any exhibit showing any proposed change in Schedule 400 as would have been required by Rule 121 if a change was sought. As such, Monsanto had every reason to believe that no decrease in the interruptible value was being sought. From the outset, Monsanto has diligently pursued discovery and is now finalizing its direct testimony to meet the October 14 filing deadline in reliance upon the Company's initial filings.

Much to the surprise of Monsanto, on September 30, 2010, more than four months after the Application was filed and just two weeks before intervenor testimony is due, Rocky Mountain Power filed supplemental testimony of Paul H. Clements ("Clements testimony") proposing for the first time new methodologies, analyses, and recommendation regarding the economic valuation of the interruptible products offered by Monsanto, proposing a new reduced value, which is 62 percent lower than the value in the existing contract and the May 28, 2010 Application. This results in a 54 percent net increase in Monsanto's overall rate, more than double what was proposed in the Application.

### **ARGUMENT**

#### **1. The Company's Application to Change Rates Fails to Comply With the Rules of Procedure and Order No. 30197 and Should Be Dismissed in its Entirety.**

In Case No. PAC-E-06-09, Order No. 30197 ("The Order") moved Monsanto from a contract to a tariff-based rate for the first time, stating:

"The transition of Monsanto from contract to tariff standard customer, we find, will facilitate future rate adjustments and should serve to keep Monsanto's rates better aligned with its costs of service. We appreciate that in moving to a tariff-based rate, Monsanto's has given up some of the certainty provided in a contract-

based rate structure.”

In the Order, the Commission also recognized that the value of interruptible products furnished by Monsanto, as well as Monsanto’s cost of service, will be important considerations in establishing the net rate to Monsanto in the future. For that reason, the Commission ordered: “Consequently, we expect the parties to address interruptible product valuation in the context of a general rate case when Monsanto’s cost of service is determined.” Order, p. 9. The Company knew that valuing Monsanto interruptibility was not only important, but necessary to establish the net rate for Monsanto in this case, as admitted by the Clements testimony. Clements testimony page 3, lines 8-13. The Company not only had every opportunity, but an absolute obligation under the Order, to address interruptible product valuation and in particular any decrease that would negatively impact Monsanto. Instead, the Company chose to ignore it and remained silent on this critically important issue until the eleventh hour. The Order specifically provided that Monsanto’s interruptible product valuation must be addressed “when Monsanto’s cost of service is determined.” Accordingly, the time to file for a decrease in the credit, which the company now seeks, was at the same time the Application was filed for an increase in firm rates.

The Clements testimony is a thinly veiled attempt to correct the Company’s defect and omission in the original Application and amounts to an improper amendment to the pleadings because amendment is only allowed by leave of the Commission. Rule 66.

Furthermore, by failing to set forth the reduction to the Monsanto interruptible product valuation and the resulting proposed changes of the existing rates and tariffs of Monsanto in the Application, the Company has failed to comply with Rule 121 which governs the form and contents of an application to change rates. Rule 121 provides in pertinent part:

**“121. FORM AND CONTENTS OF APPLICATION TO CHANGE RATES  
(Rule 121).**

01. **Utility Applications to Change Rates.** Applications by any public utility to increase, decrease or change any rate, fare, toll, rental or charge or any classification, contract, practice, rule or regulation resulting in any such increase, decrease or change must include the following data:

- a. An exhibit showing in full each proposed change in rates, tolls, rentals, charges, rules or regulation by striking over proposed deletions to existing tariffs and underlining proposed additions or amendments to existing tariffs, except applications to increase or decrease all or almost all rates and charges by a uniform percentage or by a uniform amount may be made by filing a tariff listing the proposed change and all unchanged rates and charges or rates and charges not changed by a uniform percentage or a uniform amount, or by use of another designation previously approved by the Commission that clearly calls attention to all proposed changes in numbers or wording. . . .
02. **Proposals Based Upon Computer Modeling.** In addition, in any application in which a computer model is used to represent or simulate processes from which the revenue requirement is derived or upon which allocations of the revenue requirement to different customer classes are based, complete documentation of all those computer models must be supplied to the Staff, upon request, and be available in the utility's office or other depository."

Neither the Application nor the Clements testimony included any exhibit showing a decrease in the value of Monsanto interruptible products as required by Rule 121.01a. Quoting the testimony of Clements, the Company now proposes to value the Monsanto interruptible products based upon the "Front Office model" and "the GRID model." See Clements testimony page 14, lines 4-18. These models have never been previously approved by the Commission for valuing Monsanto's interruptible products and are presented for the first time in this case by the Clements testimony.

In fact, Monsanto asked the Company to provide such a GRID model in order to evaluate the value of its interruptible products in Monsanto Data Request 3.41. The Company responded as follows:

**Monsanto Data Request 3.41**

Please provide a GRID model populated with the latest forecast information for 2011, 2012 and 2013 so that Monsanto can evaluate the system value of Monsanto curtailments and non-spin reserves.

**Response to Monsanto Data Request 3.41**

The Company objects to the request on the basis that the Company has not prepared such an analysis. The Company has provided the GRID model to Monsanto so they can perform their own analysis. The net power cost study in the

current proceeding includes the contract that was entered into in 2007 and is currently in effect for Monsanto curtailment and non-spin reserves.

Without explanation, the Company now proposes to use the very same GRID model analysis to establish a reduction in the value which they previously indicated to Monsanto did not exist. Furthermore, the Company stated in the response that the current proceeding includes the curtailment value currently in effect, and thus gave no indication that a decrease was warranted. It is obvious now the Company was not being forthright in responding to Monsanto's data request and has been "hiding the ball" for months.

The Clements testimony suggests that beyond December 31, 2010, "there will be no contract in place governing curtailment or obligating the parties to any contract terms." Clements supp, page 26, lines 19-23. This statement, like many others in his testimony which will not be addressed at this time, is clearly erroneous. Monsanto's 2008 Electric Service Agreement with PacifiCorp provides in paragraph 2.1 for a term commencing on January 1, 2008 and ending on December 31, 2010. It then goes on to provide that "after the termination date, PacifiCorp shall continue to provide any electric service to Monsanto as specified in Idaho Electric Service Schedule No. 400 or its successor then in effect until such time as the Commission establishes or approves other terms and conditions and prices." As such, the terms of the electric service agreement and Schedule 400 will remain controlling and operable until changed by the Commission. While the delay arguably may result in some prejudice to the Company, it is the Company alone that should bear this burden and responsibility by reason of the untimely filed Clements testimony.

The Company's Application should be dismissed by reason of its failure to comply with the Order and Rule 121.

## **2. The New Clements Testimony Is Untimely, Prejudicial, and Should Be Dismissed.**

If the Commission chooses not to dismiss the Application, the Clements testimony should be dismissed as a late-filed pleading that is untimely, filed without the requisite

order from the Commission, prejudicial and adversely affecting the substantial rights of Monsanto and other parties.

Without first obtaining Commission approval, the Clements testimony amounts to an improper amendment of the Application by attempting to reduce the interruptible credit value in the existing contract and the May 28<sup>th</sup> Application to a new much smaller amount. The effect is to lower Monsanto's curtailment product value by 62 percent and increase by 54 percent Monsanto's overall rate, more than double what was proposed when the Application was filed. This is clearly prejudicial to Monsanto, which has conducted extensive discovery and prepared its direct testimony in reliance upon the Company's representation in the Application that there would be no decrease in the curtailment value. Rule 65 provides that "late pleadings may be returned or dismissed." Furthermore, Rule 66 provides that only "the Commission may allow any pleading to be amended or corrected, or any omission to be supplied." The time to file for a decrease in the interruptible credit was when the Application was filed to increase rates, not more than four months later and a mere two weeks before staff and intervenor testimony is due.

The dismissal of the Clements testimony will not prejudice the Company which will have a full and fair opportunity to address in its rebuttal testimony the change in value Monsanto and or others may recommend. However, Rocky Mountain Power only could properly rebut Monsanto's recommended value, without advocating for any value less than the existing amount. As the Interruptible Credit of Schedule 400 is a critical component of the overall rate which Monsanto pays Rocky Mountain Power, the opportunity to seek authority to decrease that credit was squarely the responsibility of the Company in their original Application. To stall for four months before filing for a decrease in the credit is an unfair and self-serving tactic that now prejudices Monsanto. The May 28<sup>th</sup> Application sought an increase of \$11.7 million to Monsanto. The Clements testimony effectively raises that increase now to \$22.7 million.

Furthermore, the Clements testimony substantially alters the direct testimony the Company filed on May 28 with respect to the rate design for Schedule 400:

**Q Please describe the Company's proposed rate design changes for**

**Schedule 19, 23, 23A, 400 and 401.**

- A For customers served on these schedules, the Company proposes a uniform percentage increase to all billing elements. (Direct Testimony of William R. Griffith, page 8, lines 15-18)

Schedule 400 contains several billing elements, of which the Interruptible Demand Charge is one. This single billing element accounts for over \$8 million of Monsanto's current total payment of \$42.4 million under Schedule 400. Accordingly, the Company proposal filed May 28 was that this billing element was scheduled to increase by the 19.6% uniform percentage increase the Company is seeking for Monsanto. However, the Clements testimony ignores the Company's earlier Application and fails to address the corresponding rate impact. Monsanto estimates that with the new reduced interruptible valuation proposed in the Clements testimony, the Interruptible Demand Charge in Schedule 400 will increase from the present level of \$3.94 per kW to \$11.54, an increase of 192 percent.<sup>1</sup> That is, some four months since its Application the Company now proposes to increase the current Interruptible Demand Charge almost three times.

The late-filed Clements testimony also claims that "The Company is filing its recommendation as a backstop in the event that a settlement is not reached with Monsanto and the Commission is required to evaluate the evidence and ascribe a value to the interruptible products from Monsanto in order to determine a net rate for Monsanto starting January 1, 2011." Clements testimony, page 3, lines 13-17. The "backstop" to which Mr. Clements refers is the Company's desire for a substantially reduced interruptible credit. If the Commission is required to evaluate any evidence on changing the current net rate of Monsanto, then the Company's evidence should have been presented with its May 28 Application.

It is clear now that the Company intentionally misled Monsanto and the Commission when the Application was filed with respect to the value. Unless the Clements testimony is stricken, the Company will be allowed to benefit from its own misconduct at the

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<sup>1</sup> The proposed firm demand charge of \$14.68 less \$11.54, times 162 MW of curtailable product equals \$6.1 million as proposed in the Clements testimony.

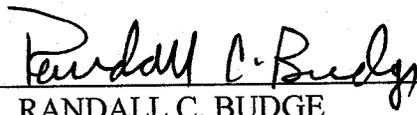
expense of Monsanto.

**CONCLUSION**

Based on the forgoing, Monsanto respectfully submits that the Company's Application should be dismissed entirety by reason of its failure to comply with the Commission's Order No. 30197 and the IPUC Rules of Procedure. Alternatively, the new Testimony of Company witness Paul J. Clements late filed on September 30, 2010 should be stricken from the record.

RESPECTFULLY SUBMITTED this 1st day of October, 2010.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By   
RANDALL C. BUDGE

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this <sup>12<sup>th</sup></sup> day of October, 2010, I served a true, correct and complete copy of the foregoing document, to each of the following, via the method so indicated:

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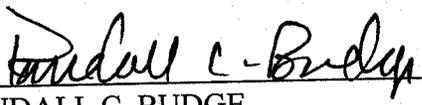
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