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August 9, 2012

**VIA UPS OVERNIGHT DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 W Washington Street  
Boise, ID 83702

Re: Case No. PAC-E-10-08  
XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs, Complainant, v.  
PACIFICORP, dba ROCKY MOUNTAIN POWER, Defendant

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Dear Ms. Jewell:

Enclosed for filing in the above-captioned docket are an original and seven (7) copies of *ROCKY MOUNTAIN POWER'S ANSWER TO XRG'S MOTION TO AMEND COMPLAINT*.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,



Ken Kaufmann

cc: PAC-E-10-08 Service List

Enclosures

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs,

Complainant,

v.

PACIFICORP, DBA ROCKY MOUNTAIN  
POWER,

Defendant.

Case No. PAC-E-10-08

ROCKY MOUNTAIN POWER'S  
ANSWER OPPOSING XRG'S  
MOTION TO AMEND  
COMPLAINT

Pursuant to IDAPA Rule 31.01.01.057, PacifiCorp, dba Rocky Mountain Power (the "Company"), respectfully submits this answer opposing XRG's Motion to Amend Complaint ("XRG's Motion").

## I. PROCEDURAL BACKGROUND

XRG filed a formal complaint with the Idaho Public Utilities Commission (“Commission”) on July 29, 2010. The Company timely answered. Both parties completed two rounds of discovery, and the Company responded in part and objected in part to XRG’s third round of production requests. On February 7, 2011, the Company moved to stay further discovery and for summary judgment. XRG opposed summary judgment and moved to continue discovery. The Commission heard oral argument. On May 18, 2012, the Commission issued Order No. 32553, dismissing XRG’s complaint after finding:

an assertion that XRG intends to enter into a contract with Rocky Mountain Power, without actions in furtherance of its intent, is not sufficient to establish entitlement to pre-March 2010 published avoided cost rates.<sup>1</sup>

On June 8, 2012, XRG filed its petition for reconsideration. XRG argued that the Commission’s decision to dismiss the complaint was an error and that XRG needed an additional opportunity to obtain and present evidence.<sup>2</sup> XRG asserted that “[t]he Commission erred by applying an arbitrary and unreasonable legal standard.”<sup>3</sup> XRG also complained that the Commission has not ruled on its request for leave to amend its complaint.<sup>4</sup> The Company opposed XRG’s petition on the grounds that the additional evidence XRG sought was not relevant to the Commission’s essential finding that XRG failed to obligate itself to power purchase agreements (PPAs) prior to March 16, 2010.

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<sup>1</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10 v. PacifiCorp, dba Rocky Mountain Power*, IPUC Case No. PAC-E-10-08, Order No. 32553, 10 (2012).

<sup>2</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLC’s Petition for Reconsideration of Commission Order No. 32553*, 17 (June 8, 2012) (“XRG’s Petition”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 19.

The Company also argued that the Commission's determination on the merits without a hearing was proper because it was based on a complete written record, the credibility of which was not at issue.<sup>5</sup>

On July 26, 2012, the Commission issued Order No. 32600.<sup>6</sup> The Commission found that "in the interest of allowing XRG the information that it argues is necessary to support its complaint, we now grant XRG's narrowed request to complete discovery."<sup>7</sup> The Commission directed the Company to respond to specified questions in XRG's Third Production Request by August 17, 2012. The Commission directed the parties to file simultaneous legal briefs on September 7, 2012. The briefs are "a final opportunity on reconsideration to assert a position regarding the merits of the underlying XRG complaint, i.e., whether and to what extent XRG is entitled to pre-March 16, 2010, published avoided cost rates."<sup>8</sup>

On July 27, 2012, without attempting to first confer with Rocky Mountain Power, XRG filed a motion to amend its complaint.<sup>9</sup> XRG requests that the Commission accept a new prayer for relief in the alternative to XRG's original prayer for avoided cost rates in Order No. 30744. XRG's alternative prayer is for avoided cost rates in Order No.

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<sup>5</sup> *Rocky Mountain Power's Answer to XRG's Petition for Reconsideration of Commission Order No. 32553*, IPUC Case No. PAC-E-10-08, 14 (June 18, 2012) ("PacifiCorp's Answer Opposing Reconsideration"). XRG's Petition argued (on page 18) that credibility was at issue in Order No. 32553, citing to pages 9-10 of the Order. Rocky Mountain Power responded, on pages 13-15 of PacifiCorp's Answer Opposing Reconsideration, that the passage on pages 9-10 challenged by XRG constituted harmless error at worst, and the Commission could clarify in its final order on reconsideration that this passage was not material to its holding in Order No. 32553.

<sup>6</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10 v. PacifiCorp, dba Rocky Mountain Power*, IPUC Case No. PAC-E-10-08, Order No. 32600 (2012).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLC's Motion to Amend Complaint* (July 27, 2012) ("XRG's Motion to Amend").

31025.<sup>10</sup> XRG argues that amending the complaint is appropriate because it reasonably expected the Commission to ascertain from its original complaint that it sought Order No. 31025 rates.<sup>11</sup> XRG argues that amending the complaint would not prejudice the Company because it is “limited to additional facts and relief specifically included in XRG’s Answer in opposition to the Company’s Motion for Summary Judgment.”<sup>12</sup> XRG notes that Order No. 31025 rates were in effect when it filed its original complaint on July 29, 2010.

## II. DISCUSSION

On July 27, 2012, nearly two years after it filed its complaint, and after the Commission dismissed that complaint in Order No. 32553, XRG moved to amend its complaint for the first time. The Commission should hold that XRG’s motion is untimely, per se, when filed in the context of reconsideration. The Commission should also deny the motion as unduly prejudicial. Commission rules allow for pleading defect corrections when they do not affect substantial rights of the parties. However, allowing XRG’s First Amended Complaint at this late hour would result in severe prejudice to the Company. XRG’s motion therefore must be denied.

### A. **XRG is procedurally barred from amending its complaint at this stage.**

XRG’s motion is untimely, per se, because it was filed in the reconsideration

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<sup>10</sup> In footnote 9 on page 18 of XRG’s answer opposing summary judgment filed February 22, 2011, XRG requested leave to amend its complaint to include a claim for rates in effect after March 15, 2010 in Order No. 31025. This request lacked the formalities of a proper motion, including attachment of a proposed amended complaint. In Order No. 32600, the Commission ruled “a mere mention in a footnote of what is otherwise an answer to Rocky Mountain Power’s Motion for Summary Judgment is not sufficient to constitute a motion upon which the Commission can base a ruling.” Order No. 32600 at 1.

<sup>11</sup> XRG’s Motion to Amend at 5.

<sup>12</sup> *Id.*

phase of this proceeding. Commission Order No. 32553 is a final order disposing of XRG's complaint on the merits. The Commission granted limited reconsideration in Order No. 32588. The parties are presently in the midst of the reconsideration procedure ordered by the Commission in Order No. 32600. Neither XRG's petition for reconsideration nor the Commission's grant of reconsideration alters the effectiveness and finality of Order No. 32553.<sup>13</sup> Unless and until the Commission abrogates or changes Order No. 32553, XRG's motion to amend the complaint may not be entertained.<sup>14</sup>

**B. The Commission has discretion to deny XRG's Motion.**

The Commission also may dismiss XRG's motion in accordance with IDAPA 32.01.01.066. Commission Rule 66 governs amendments to pleadings in matters before the Commission and endows the Commission with discretion in such matters:

The Commission *may* allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded.

IDAPA. Rule 31.01.01.066 (emphasis added). The Commission has used its discretion in the past to deny a motion to amend a complaint filed late in a proceeding when it could have been filed much earlier.<sup>15</sup> The Commission's rules and orders do not provide

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<sup>13</sup> Idaho Code § 61-626(3) ("A petition for such reconsideration shall not... operate in any manner, to stay or postpone the enforcement thereof."); IDAPA 31.01.01.333 ("Filing a petition for reconsideration does not excuse compliance with any order nor stay the effectiveness of any order, unless otherwise ordered.").

<sup>14</sup> See *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996) (announcing a Ninth Circuit rule that "once judgment has been entered in a case, a motion to amend the complaint can only be entertained if the judgment is first reopened under a motion brought under [Fed.R.Civ. Proc.] 59 or 60."). The *Lindauer* rule is not controlling; however the Idaho Supreme Court has a preference for interpreting the Idaho Rules of Civil Procedure in conformance with the interpretation placed upon the same language in the federal rules. *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 796 (2001).

<sup>15</sup> *In the Matter of the Joint Petition of Robert Ryder, DBA Radio Paging Service, Joseph McNeal, DBA PageData and Interpage of Idaho, for a Declaratory Order and Recovery of Overcharges from U.S. West*

specific guidance on how to determine whether a motion to amend is so untimely that it would unduly affect the substantive rights of the non-movant. However, in the past, the Commission has adopted the standards of the Idaho Rules of Civil Procedure (I.R.C.P.), as well as the Idaho Court's supporting case law, and applied them in Commission proceedings.<sup>16</sup> The Idaho civil procedure analog to Rule 66 is I.R.C.P. 15, and the Idaho Courts' application of that rule is instructive. Under I.R.C.P. 15, a court must explain why it denied a motion to amend a complaint; refusal to grant leave to amend without *any* justifying reason may be an abuse of discretion.<sup>17</sup> The Idaho Supreme Court holds that five factors control when the district court considers the timeliness of a motion for leave to amend a complaint:

In the absence of any apparent or declared reason—such as *undue delay*, *bad faith* or dilatory motive on the part of the movant, *repeated failure to cure deficiencies by amendment* previously allowed, *undue prejudice to the opposing party* by virtue of allowance of the amendment, *futility of amendment*, etc.—the leave sought should, as the rules require, be freely given.<sup>18</sup>

As discussed below, all five factors weigh against granting XRG's motion to amend.

**1. XRG's Motion to Amend will cause *undue delay*.**

Undue delay includes delay that imposes unwarranted burdens on the court.<sup>19</sup>

XRG's delay in filing its motion to amend until after the Commission ordered limited

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*Communications*, IPUC Case No. USW-T-99-24, Order No. 28626 (2001) (denying motion to amend complaint filed after issuance of an order on reconsideration pursuant to Rules 326 and 331); *Hayden Pines Ratepayers Assoc. v. Hayden Pines Water Co.*, IPUC Case No. U-1121-37, Order No. 21444 (1987) (denying motion to amend where movant had opportunity to amend earlier in the proceeding but did not).

<sup>16</sup> *Grand View PV Solar Two, LLC v. Idaho Power Co.*, IPUC Case No. IPC-E-11-15, Order No. 32580, 6 (2012) (applying IRCP 56 and related case law to motion for summary judgment).

<sup>17</sup> *Atwood v. Smith*, 143 Idaho 110, 115 (2006).

<sup>18</sup> *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 612, 114 P.3d 974, 982 (2005) (emphasis added) (citing prior Idaho Court decisions quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

<sup>19</sup> *BNSF Railway Co. v. San Joaquin Valley Railroad Co.*, Case No. 1:08-cv-01086-AWI-SMS, 2011 U.S. Dist LEXIS 84694, \*5 (E.D. Cal, 2011).

reconsideration of Order No. 32553 unnecessarily burdens the Commission. Because XRG waited so long to move to amend, it is impossible for the Commission to grant XRG's motion and also adhere to the procedural process and timelines set forth in Idaho law.<sup>20</sup> If the Commission were to allow the amended complaint at this time, it could abandon the current reconsideration schedule, rescind Order No. 32553, and set a new schedule for discovery and a hearing. This option would, in essence, give XRG a second trial on the same issues after the Commission already issued its final order. Alternatively, it could deal with XRG's claims piecemeal.<sup>21</sup> Both options involve significant extra time and effort of the Commission (as well as undue prejudice to the Company) that would not have been necessary had XRG moved to amend its complaint at any time prior to Order No. 32553. XRG's delay unnecessarily burdens the Commission and weighs heavily in favor of denying XRG's motion.

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<sup>20</sup> Idaho Code § 61-626 requires that written briefs must be filed within 13 weeks after the date for filing petitions for reconsideration. If reconsideration is ordered, the Commission must issue its order upon reconsideration within 28 days after the matter is finally submitted for reconsideration. Consistent with these statutory requirements, Order No. 32600 requires the Company to answer certain interrogatories from XRG by August 17 and allows XRG and the Company to file a final legal brief on "whether and to what extent XRG is entitled to pre-March 16, 2010, published avoided cost rates" by September 17, 2012. The process established by the Commission does not allow time for the Commission to rule on XRG's motion before the final briefing deadline, let alone allow time for the Company to file an amended answer.

<sup>21</sup> A litigant should not be permitted to assert its argument *seriatim*, especially after losing a summary judgment:

At trial, parties are required to raise all issues and facts so the court does not face piecemeal litigation. If legal theories and facts are not raised at the trial stage, it is untimely to assert them on motion for reconsideration particularly where the evidence and theories could and should have been timely presented. As stated in *Great Hawaiian Financial Corp. v. Aiu*, 116 F.R.D. 612 (D. Hawaii 1987):

A litigant should not be permitted to assert its argument *seriatim*, especially after losing a summary judgment.

A motion for reconsideration is an improper vehicle to tender new legal theories not raised in opposition to summary judgment.

The same teaching applies to the pending motion for reconsideration.

*In re St. Marie Dev. Corp. of Mont., Inc.*, 334 B.R. 663, 676 (Bankr. D. Mont. 2005).

**2. XRG had a *bad faith* motive to not amend its complaint prior to the reconsideration phase.**

Because an order entitling it to pre-March 2010 rates is inferior to an order entitling it to pre-December 14, 2010 rates, XRG had motive not to ask the Commission for the pre-December 14, 2010 rates unless and until it believed the Commission would not grant its request for pre-March 2010 rates. Courts have found cause to deny a motion to amend a complaint on the grounds of bad faith where the plaintiff held a legal theory in reserve, opting to plead it only when it appeared that its preferred theory was about to fail.

*Awareness of facts and failure to include them in the complaint might give rise to the inference that the plaintiff was engaging in tactical maneuvers to force the court to consider various theories seriatim. In such a case, where the movant first presents a theory difficult to establish but favorable and, only after that fails, a less favorable theory, denial of leave to amend on the grounds of bad faith may be appropriate.*<sup>22</sup>

Such a rule may be a basis for denying XRG's motion to amend, because XRG offers no plausible explanation why it did not seek to add a second claim until after the Company moved for summary judgment in February 2011. When XRG filed its original Complaint on July 29, 2010, it was aware that Order No. 31025 rates went into effect on March 16, 2010. Even after the Company asked the Commission to lower the eligibility cap for Order No. 31025 rates, on November 5, 2010, and after the Commission lowered the eligibility cap making XRG ineligible for Order No. 31025 rates on December 14, 2010, XRG made no attempt to amend its complaint. XRG's failure to include an alternative request that the Commission order the Company to offer it four PPAs at Order No. 31025 rates was not due to lack of knowledge. If it sought to gain a tactical advantage by

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<sup>22</sup> *Dussouy v. Gulf Coast Investment*, 660 F.2d 594, 599 (5th Cir. 1981) (emphasis added).

holding back its alternative prayer for relief, then its request to amend its complaint now may properly be denied based on XRG's bad faith.

**3. XRG repeatedly failed to cure its complaint for two years.**

Alternatively, if XRG sat on its rights for no reason, then its failure to cure a potentially fatal defect for two years is blameworthy under the court's third factor—repeated failure to cure a defect in the complaint. A moving party's inability to acceptably explain why it delayed filing an amended complaint may indicate that delay was undue.<sup>23</sup> Whether the moving party knew or should have known the facts and theories raised in the proposed amendment at the time it filed its original pleadings is a relevant consideration in assessing timeliness.<sup>24</sup> As discussed above, XRG was aware of the facts and theories raised in its amendment at the time it filed its original complaint and chose not to plead them—for *two* years. The only justification offered by XRG for its delay is that it “reasonably expected” that the Commission would construe its original complaint to include a claim for alternative relief of the rates in effect at the time XRG filed its Complaint.<sup>25</sup> However, XRG's expectation has no legal basis. “The liberal construction of a complaint in notice pleading is to avoid dismissal of an inartfully drawn complaint that gives adequate notice of the claims sought to be asserted.”<sup>26</sup> XRG's complaint gives no such notice. To infer that XRG's prayer for “any other relief that the Commission deems necessary” is really asking for PPAs with prices in effect prior to

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<sup>23</sup> *BNSF Railway Co.*, 2011 U.S. Dist. LEXIS 84694, \*6.

<sup>24</sup> *Id.*

<sup>25</sup> XRG's Motion to Amend at 5.

<sup>26</sup> *Amco Ins. Co. v. Tri-Spur Inv. Co.*, 140 Idaho 733, 738-739 (2004) (holding that where a complaint does not specify a claim covered by an insurance policy, insurer's duty to indemnify is not triggered even if facts in complaint supported unplead claims that would have been covered by the policy).

December 14, 2010 would not constitute liberal construction so much as it would amount to alchemy.<sup>27</sup> In Order No. 28626, the Commission recognized that its own Rule 66 requires complaints to be “liberally construed” but explained that it cannot rewrite a complaint in the name of liberal construction.

Commission Rule 66 requires that “pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded.” The relief prayed for in the Complaint, even when liberally construed, cannot be interpreted as a request for recovery beyond the time each Petitioner entered into an interconnection agreement with Qwest.<sup>28</sup>

If the petitioners wished to expand the recovery period, explained the Commission, they “should have amended their Complaint.”<sup>29</sup> XRG’s explanation for its repeated failure to seek amendment before the reconsideration phase is not credible and, therefore, is grounds for denying its motion to amend.

**4. Granting XRG’s request would *unduly prejudice* the Company.**

The Company would be unduly prejudiced in several ways if the Commission grants XRG’s motion to amend its complaint. Courts have found undue prejudice where the late-tendered amendment fundamentally changes the case in a way that would require additional discovery:

When, after a period of extensive discovery, a party proposes a late-tendered amendment that would fundamentally change the case to incorporate new causes of action and that would require additional discovery, the amendment may be appropriately denied as prejudicial to the opposing party.<sup>30</sup>

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<sup>27</sup> A more likely explanation for XRG’s inaction is that it did not want the Commission to infer that XRG, by amending its complaint, was admitting that it was not entitled to the pre-March 2010 rates. This is exactly that type of tactical maneuvering that justifies denial of a motion to amend on the grounds of bad faith.

<sup>28</sup> Order No. 28626 at n.3.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *BNSF Railway Co.*, 2011 U.S. Dist LEXIS 84694, \*7.

XRG's proposed amendment fundamentally changes the case by changing the cutoff date for rate eligibility from March 16, 2010 to December 14, 2010. The Company's discovery, and its resulting defense, focused almost entirely on whether XRG was ready, willing, and able to obligate itself, and whether it in fact attempted to obligate itself, to a legally enforceable obligation at any time *prior to* March 16, 2010. The Company cannot defend itself against XRG's proposed amended complaint unless it conducts discovery regarding the period after March 16, 2010. Such additional discovery will involve substantial costs. Such costs of additional discovery (and related litigation costs) are prejudicial where, as here, they could easily have been avoided had the proposed amendments been included with the original pleading.<sup>31</sup>

The Company also has serious concerns whether adequate discovery on XRG's proposed new claim is even possible given the passage of time. Vital, discoverable, information related to the Company's defense may have been lost or destroyed in the two years since XRG filed its complaint. And one of the Company's key employees involved in matters related to XRG's proposed amended claim left PacifiCorp in 2011 and may not be available to assist with the Company's defense.

**5. Amendment of XRG's Complaint would be *futile*.**

Finally, XRG's motion to amend should be denied based on futility. If a proposed amendment is legally insufficient—and would therefore be useless—it is proper to deny leave to amend.<sup>32</sup> XRG's proposed second claim has only one substantive difference from its original claim. The proposed second claim alleges that XRG qualified for Order

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<sup>31</sup> *Id.* at \*11-12.

<sup>32</sup> *BNSF Railway Co.*, 2011 U.S. Dist LEXIS 84694, \*13.

No. 31025 rates because it filed a meritorious complaint prior to the December 14, 2010 rate change.<sup>33</sup> XRG's original claim ignores this meritorious complaint element and alleges that XRG qualified for Order No. 30744 rates even though it did not file a complaint for over four months after rates changed. XRG's reliance on the so-called pre-filed complaint rule of *A.W. Brown*<sup>34</sup> is futile because XRG's complaint was not about the December 14, 2010 rate change. To avail itself of the rule of *A.W. Brown*, XRG needed to file a complaint alleging it was eligible for Order No. 31025 rates before the December 14, 2010 rate change date. Since it did not do so, its attempt to enjoy the benefit of the pre-filed complaint rule is futile and therefore its motion to amend should be denied.

### III. CONCLUSION

Under the Ninth Circuit Court of Appeals rule, in *Lindauer*, XRG's motion to amend its complaint during the reconsideration phase of this proceeding is untimely, per se, and must be denied. Furthermore, all five factors the Idaho Court uses to assess the timeliness of a motion to amend a complaint strongly favor denial of XRG's motion. The requested amendment would require significant delay in the resolution of the current complaint and substantial unnecessary effort from the Commission. The Company would incur substantial costs to re-do discovery, and the passage of time has degraded the information available to be discovered. And the amendment proposed by XRG is futile. Finally, XRG's lack of reasonable explanation for its two-year delay in seeking amendment suggests that the delay was either willful or tactical. Under these

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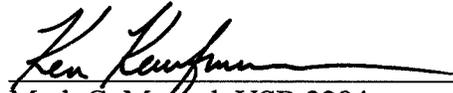
<sup>33</sup> *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLC's Proposed First Amended Complaint*, ¶35 (July 27, 2012).

<sup>34</sup> *A.W. Brown Co., Inc. v. Idaho Power Co.*, 121 Idaho 812, 816, 828 P.2d 841 (1992).

circumstances, denying XRG's motion would be patently just. At this time, the resulting burden and prejudice to the Commission and the Company from granting XRG's motion, which it should have filed long ago, outweigh any offsetting prejudice to XRG. XRG's request to amend its original complaint should be denied for the reasons set forth above.

Dated this \_\_\_ day of August 2012.

Respectfully submitted,



Mark C. Moench USB 2284

Daniel E. Solander USB 11467

Rocky Mountain Power

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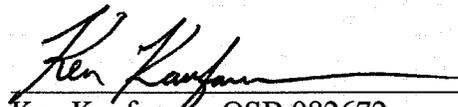
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 9<sup>th</sup> day of August 2012, a true and correct copy of the foregoing *ROCKY MOUNTAIN POWER'S ANSWER TO XRG'S MOTION TO AMEND COMPLAINT* in Case No. PAC-E-10-08 was served in the manner shown to:

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|---|---|
| <p>Jean Jewell<br/>Commission Secretary<br/>Idaho Public Utilities Commission<br/>472 W Washington Street<br/>Boise, ID 83702<br/><a href="mailto:jean.jewell@puc.idaho.gov">jean.jewell@puc.idaho.gov</a><br/>(UPS overnight delivery and electronic mail)</p> | <p>Peter J. Richardson<br/>Gregory M. Adams<br/>Richardson &amp; O'Leary, PLLC<br/>PO Box 7218<br/>Boise, ID 83707<br/><a href="mailto:greg@richardsonandoleary.com">greg@richardsonandoleary.com</a><br/>(First Class Mail and electronic mail)</p>    |
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DATED this 9<sup>th</sup> day of August 2012.

LOVINGER KAUFMANN LLP

  
\_\_\_\_\_  
Ken Kaufmann, OSB 982672  
Attorney for Rocky Mountain Power