

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE AMENDED )  
APPLICATION OF ROCKY MOUNTAIN )  
POWER, FOR AUTHORITY TO ESTABLISH A ) Docket No. 20000-264-EA-06  
DEMAND-SIDE MANAGEMENT PROGRAM ) (Record No. 10960)  
IN WYOMING, ESTABLISH DSM TARIFFS, )  
AND INCREASE RATES TO FUND DSM )

APPEARANCES

For the Applicant Rocky Mountain Power (Rocky Mountain or the Company):  
DANIEL E. SOLANDER, Senior Counsel for Rocky Mountain, Salt Lake City, Utah;  
and PAUL J. HICKEY and ROGER C. FRANSEN of Hickey & Evans, LLP, Cheyenne,  
Wyoming.

For Intervenor Office of Consumer Advocate (OCA):  
DAVID McMULLIAN, Counsel for OCA, Cheyenne Wyoming

For Intervenor Wyoming Industrial Energy Consumers (WIEC):  
ROBERT M. POMEROY, Jr., ROBYN KASHIWA and THORVALD A. NELSON of  
Holland & Hart, LLP, Greenwood Village, Colorado

For Intervenor Southwest Energy Efficiency Project (SWEEP):  
HOWARD GELLER, Executive Director, Boulder, Colorado

HEARD BEFORE

Chairman KATHLEEN A. LEWIS  
Deputy Chairman STEVE OXLEY  
Commissioner MARY BYRNES

STEVE MINK, Assistant Secretary  
presiding pursuant to a Special Order of the Commission

MEMORANDUM OPINION, FINDINGS AND ORDER  
APPROVING STIPULATION AND AGREEMENT  
(Issued October 2, 2008)

This matter is before the Wyoming Public Service Commission (Commission) upon the amended application of Rocky Mountain Power for authority to establish a Demand-Side Management (DSM) Program in Wyoming and related DSM tariffs and approval to increase rates to fund the DSM Program. The Commission, having reviewed the amended application, attached exhibits, the testimony of the parties at the public hearing in this matter, the *Stipulation and Agreement*, its files regarding Rocky Mountain, applicable Wyoming utility law, and being otherwise fully advised in the premises, HEREBY FINDS AND CONCLUDES:

## FINDINGS OF FACT: PROCEDURE AND PARTIES

1. On December 18, 2006, Rocky Mountain submitted an application, together with pre-filed testimony, exhibits and a proposed new tariff Schedule 191, requesting authority to implement a three-year DSM pilot program intended to introduce Wyoming ratepayers to the concept of conservation by offering cost-effective options proven to be successful in the other states in which the Company serves.

2. On January 4, 2007, WIEC filed its *Petition for Leave to Intervene* and the OCA filed its *Notice of Intervention and Request for Hearing* on January 25, 2007. Both the OCA and WIEC were properly admitted to these proceedings as parties for all purposes.

3. On February 16, 2007, the parties submitted a *Stipulation and Agreement* which the Commission rejected in an *Order* issued on November 30, 2007, which also directed the Company to file an amended application.

4. On December 27, 2007, Rocky Mountain filed its amended application pursuant to the Commission's November 30, 2007, *Order*. Rocky Mountain now proposes six energy efficiency programs it terms cost effective that feature rebates, incentives, and energy engineering services to help customers select, install and use energy-efficient equipment or make permanent operational changes that reduce energy consumption and save money. Rocky Mountain estimates that the annual cost of the proposed DSM programs would range from approximately \$3 million in the first year, to approximately \$5.8 million in the second year, and to approximately \$9.2 million by the fifth year. Rocky Mountain proposes to fund the DSM programs with stand-alone "Customer Efficiency Services" rate surcharges, which will be mandatory for all customers. If the amended DSM application were approved by the Commission, it would result in the imposition of a customer surcharge of approximately 0.96% in the first year of the five-year DSM program, and a customer surcharge of up to approximately 2% in subsequent years.

5. The Commission issued an initial *Suspension Order* under W.S. § 37-3-106(c) on January 10, 2008, having determined the proper new filing date as December 27, 2007.

6. On January 14, 2008, the Commission issued a *Notice of Amended Application* which provided for an intervention and protest deadline of February 4, 2008, during which interested persons could file statements, intervention petitions, requests for hearing or other representations with regard to the Company's amended application. It was published once per week for two consecutive weeks in the *Glenrock Independent*, the *Thermopolis Independent Record*, the *Casper Star-Tribune*, the *Green River Star*, the *Northern Wyoming Daily News* in Worland, the *Riverton Ranger*, the *Kemmerer Gazette*, the *Rawlins Daily Times*, the *Daily Rocket-Miner* in Rock Springs, the *Pinedale Roundup*, the *Uinta County Herald* in Evanston, the *Cody Enterprise*, the *Buffalo Bulletin*, the *Douglas Budget*, the *Lovell Chronicle*, the *Lander Journal*, and the *Daily Boomerang* in Laramie. A Public Service Announcement with regard to the application was broadcast on radio five times per week for two consecutive weeks on *KRAL* in Rawlins, *KTWO* in Casper, *KLDI* in Laramie, *KRKK* in Rock Springs, *KKTY* in Douglas,

*KOVE* in Lander, *KBBS* in Buffalo, *KEVA* in Evanston, *KTHE* in Thermopolis, *KWOR-AM* in Worland, *KPIN* in Pinedale, *KMER* in Kemmerer, and *KODI* in Cody.

7. On January 24, 2008, Howard Geller, Executive Director for SWEEP, filed a request for intervention, which the Commission granted in its *Order Authorizing Intervention* of February 26, 2008. The OCA and WIEC remained intervening parties for all purposes after the filing of the amended application.

8. On, March 18, 2008, Rocky Mountain, filed its *Joint Motion for Approval of Procedural Schedule (Motion)* which provided that discovery responses regarding the answer and rebuttal/cross-answer testimony should be due within seven days of receipt in addition to the following procedural schedule detailed below:

April 25, 2008	Intervenor testimony due
May 13, 2008	Rocky Mountain rebuttal testimony due. Intervenor cross-answer testimony due.
May 16, 2008	Rebuttal discovery deadline.
May 21, 2008	Video conference public comment hearings.
May 23, 2008	Responses to rebuttal discovery due.
May 27, 2008	Public Hearing in Cheyenne, Wyoming

The Commission approved the procedural schedule at its open meeting of March 28, 2008.

9. On April 7, 2008, the Commission issued its *Notice and Order Establishing Procedural Schedule and Setting Public Hearing*. The *Notice and Order* was published once per week for two consecutive weeks in the *Glenrock Independent*, the *Thermopolis Independent Record*, the *Casper Star-Tribune*, the *Northern Wyoming Daily News* in Worland, the *Riverton Ranger*, the *Kemmerer Gazette*, the *Rawlins Daily Times*, the *Daily Rocket-Miner* in Rock Springs, the *Pinedale Roundup*, the *Uinta County Herald* in Evanston, the *Cody Enterprise*, the *Buffalo Bulletin*, the *Douglas Budget*, the *Lovell Chronicle*, the *Lander Journal*, and the *Daily Boomerang* in Laramie. A Public Service Announcement with regard to the application was broadcast on radio five times per week for two consecutive weeks on *KTWO* in Casper, *KLDI* in Laramie, *KRKK* in Rock Springs, *KKTY* in Douglas, *KOVE* in Lander, *KBBS* in Buffalo, *KEVA* in Evanston, *KTHE* in Thermopolis, *KWOR-AM* in Worland, *KPIN* in Pinedale, *KMER* in Kemmerer, and *KODI* in Cody.

10. On May 23, 2008, Rocky Mountain filed a *Stipulation and Agreement (Stipulation)* between Rocky Mountain, OCA, SWEEP and WIEC which generally advocated that the Company's DSM programs and associated details as reflected in the amended application should be implemented. The *Stipulation* made certain modifications to the particulars of the Company's amended application. That is, the *Stipulation* requires [i] the Company to file a comprehensive DSM program review report by July 1, 2012; [ii] the surcharge to fund DSM be set separately for residential, small commercial and large industrial customer groups to reflect the actual costs of the DSM programs applicable to each group and to avoid the possibility of cross-subsidization among customer groups.

11. A public comment meeting took place on May 21, 2008, via a compressed video network hosted from Cheyenne and connecting to Buffalo, Casper, Cody, Douglas, Evanston, Green River, Kemmerer, Lander, Laramie, Pinedale, Rawlins, Riverton, Rock Springs, and Worland, as noticed in the April 7, 2008, *Notice and Order*. The public hearing was held on May 27, 2008, in Cheyenne, Wyoming. Rocky Mountain, OCA, WIEC and SWEEP fully participated in the proceedings.

12. Rocky Mountain submitted several Late-Filed Exhibits on June 3, 2008, and June 13, 2008, in response to direction from the Commission.

13. On June 5, 2008, Commission Counsel received an e-mail from Howard Geller, Executive Director for SWEEP, requesting that an attached Colorado Public Service Commission *Order* regarding DSM policy for Xcel Energy become part of the record in this matter. Rocky Mountain filed an *Objection to SWEEP's Late Filed Exhibit* on June 10, 2008. The Commission issued an *Order Excluding Late Filed Exhibit* on June 24, 2008, stating SWEEP's proposed exhibit [i] was submitted after the conclusion of the hearing and after closure of the record; [ii] was not germane to the issues herein; [iii] was not supported by testimony; and [iv] was not subject to an opportunity for the parties to test the *Exhibit's* relevance in hearing.

14. The Commission issued its second *Suspension Order* under W.S. § 37-3-106(c) on July 25, 2008.

15. Pursuant to W.S. § 16-4-403, the Commission held public deliberations on August 6, 2008, and rendered its decision approving the Stipulation with several modifications and directed the preparation of a written order consistent with its deliberations.

#### FINDINGS OF FACT: PARTY POSITIONS

##### Rocky Mountain Power

16. Ms. Carol Hunter, Vice-President of Division Services, testified for Rocky Mountain, providing summaries of the *Stipulation* and of how the Company considered each of the five points articulated in the Commissioner's *Special Opinion of Concurrence (Special Opinion)*<sup>1</sup> attached to the Commission's *Order Rejecting Stipulation*, on November 30, 2007, in this docket.

17. Ms. Hunter testified that the Company considered the first issue of the *Special Opinion* by proposing that each individual program be evaluated on its cost effectiveness rather than a specific resource acquisition target. She stated that cost effectiveness is an appropriate

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<sup>1</sup> The *Special Opinion* urged the Company to consider the following in its amended application: [1] an articulated specific goal for DSM, such as, an energy savings target; [2] contributions from and participation of all customer classes in a way that avoids interclass subsidies; [3] the challenges and opportunities of providing DSM when large industrial customers constitute a substantial portion of the load base; [4] a program component that places performance responsibility on the Company to attain specific goals and [5] financial disincentives to investing in energy efficiency and approaches for overcoming them.

measure since the DSM programs are voluntary and the Company cannot guarantee a specific rate of customer participation. She also stated that cost effective DSM targets can have negative impacts in that the Company may focus on hitting a specific energy savings target instead of optimizing the cost effectiveness of the programs, resulting in an allocation of resources that may not be the most efficient or least cost. She also testified that DSM programs are necessary because embedded cost pricing methods, when used in an increasing cost environment, customers receive muted price signals. To counter inaccurate price signals, the Company must pursue DSM programs to induce customers to choose DSM options. Additionally the Company needs to overcome the negative effects of the dampened price signals by proposing better price signals, offering cost effective DSM programs, educating customers on energy efficiency and encouraging policy makers to adopt energy efficient technologies, codes and standards. She stated that the Company plans to engage in all of these activities in Wyoming. (Tr. pp. 25-26; RMP Exhibit 1, p. 5-6.)

18. Ms. Hunter testified that the Company recognized the concerns regarding interclass subsidies. She stated the programs are designed to offset the need for more expensive generating resources and power purchases, which benefit the whole system. She reasoned, because the savings from DSM benefit all customers through lower prices, there are no interclass subsidies when all customers pay equally for the DSM programs. However, the Company, cognizant of the Commission's concerns, proposed three separate categories of rates among the various customer classes in the *Stipulation* to minimize any subsidies. (Tr. p. 27; RMP Exhibit 1, p. 9.)

19. With respect to the third point, Ms. Hunter stated that half of the Company's Wyoming revenues are derived from around 100 industrial customers. Many of these customers have already invested in energy efficiency measures and are hesitant to pay a surcharge to enable their competitors to become more energy efficient. She stated that these customers should not be able to impede the acquisition of a cost effective energy resource for the rest of Wyoming customers. She argued that DSM resources benefit all Wyoming customers and therefore all Wyoming customers should be expected to participate in paying for the acquisition of DSM resources. (Tr. p. 28; RMP Exhibit 1, pp. 9-10.)

20. On the fourth point, Ms. Hunter stated, the Company recommends that "cost effectiveness" be the standard of performance. She stated that the Company will be filing program evaluations with the Commission on a regular basis. These evaluations will help the Company and the Commission determine whether the programs are underperforming or not. If a program is found to be underperforming, the Company will be responsible for improving it or cancelling it, subject to Commission approval. If, after evaluating the DSM programs, the Company fails to take appropriate action with respect to any underperforming program then the Company should not receive cost recovery authority from the Commission. The Company's goal is to ensure the DSM resources are less expensive than the available supply-side alternatives. (Tr. pp. 28-29; RMP Exhibit 1, p. 10.)

21. On the last point, Ms. Hunter stated that the proposed rate surcharges remove the possible historic test period and regulatory lag disincentives to offering DSM programs. She added that a DSM balancing account would allow the Company, its customers and the

Commission to closely monitor DSM expenses and revenues generated by individual programs for accountability purposes. (Tr. p. 29.)

22. Ms. Hunter also explained the background of this DSM application, stating that the Company's 2007 Integrated Resource Plan (IRP) included an additional 100 megawatts of capacity and 2,000 gigawatt hours of energy-focused resources from programs similar to those proposed in the amended application. She stated that, between 2007 and 2016, Company forecasts indicate that these DSM resources will contribute to the lowest cost diversified electricity portfolio. She stated that, in order to achieve that level of DSM savings over the next ten years, the Company will need to actively pursue demand-side resources in each of the six states it serves. She stated that the Company contracted with Quantec, a consulting firm, to perform a study in order to help the Company effectively exploit DSM's potential. It addressed the usefulness of DSM-related resource opportunities in all six states across all customer sectors and of various energy and capacity-related demand-side resources. She testified that the DSM potential study suggested there are approximately 4,400 gigawatt hours of energy efficiency-related DSM resources available across the Company's service area (excluding Oregon). She stated that these resources are available over the next twenty years, provided the Company actively pursues them. She stated the DSM potential assessment suggests 16% of the potential achievable DSM energy efficiency resources are located in Wyoming. (Tr. pp. 30-32; and Exhibit 1, p. 13.)

23. Ms. Hunter gave a summary of the six DSM programs currently proposed by Rocky Mountain. They are: [i] the Home Energy Savings Program, [ii] the Refrigerator Recycling Program, [iii] the Low-cost Residential Weatherization Program, [iv] FinAnswer Express, [v] the Revised Energy FinAnswer and [vi] the Self-Direct Program for large customers. She stated that the Home Savings Program is a residential multi-measure incentive offering targeting most residential energy efficiency improvements. The Refrigerator Recycling program is a program to induce customers to remove older, less energy efficient refrigerators and freezers from the system. FinAnswer Express is a program for businesses for single, focused projects, like improved lighting. Revised Energy FinAnswer is a comprehensive business program that provides engineering services and financial incentives for comprehensive energy efficiency projects. The Self-Direct Program is designed to encourage self-investment in energy efficiency by large customers in exchange for bill credits against their monthly DSM surcharge. Ms. Hunter also testified that Rocky Mountain will work to educate customers on energy efficiency and conservation options and to encourage policy makers to adopt energy efficient technology, codes and standards. (Tr. pp. 32-34.)

24. Mr. Jeffrey Bumgarner, PacifiCorp's Director of DSM, testified for Rocky Mountain, providing an overview of the programs. The Home Energy Savings program is available to customers and landlords of customers with newer existing units, served on Schedules 2 and 18. It provides incentives for the purchase and installation of energy efficient appliances, lighting, and equipment. All the incentives under this program are handled through a post-purchase application process, except for the compact fluorescent lighting which is handled through a retail buy down. The second residential program, Mr. Bumgarner testified, is the Refrigerator/Freezer Recycling Program, marketed under the name "See Ya Later Refrigerator". He said the program removes old working (and generally less efficient) refrigerators and freezers

from the system, recycling them so they do not end up in the secondary appliance market. Customers who participate will be able to receive a thirty dollar cash incentive, and free pick up and removal of the old appliance. Mr. Bumgarner testified that the third residential program is the Low Income Weatherization Program, applicable to income-qualifying customers. He stated the program will provide incentives covering 50% of the cost of the program's measures (Tr. pp. 146-151). He testified the FinAnswer Express Program is available to all business customers. It provides incentives for common energy efficiency measures such as lighting, motors, and air-conditioning, and is applicable to new construction and retrofit projects. The second business program, the Revised Energy FinAnswer Program, is, according to Mr. Bumgarner, available to all business customers but not to existing commercial buildings under 20,000 square feet. He stated that this program includes the same energy engineering and audits as the current Energy FinAnswer Program, but it replaces the loan provisions of the earlier program with an incentive offer based on the energy and capacity savings of an individual project. Customers can receive the lowest of the following incentives, 12 cents per kWh, \$50 a kW or fifty percent of the project cost. The Self-Direction Program is the third business program, and it is available to large industrial customers with a demand of 1,000 kW or annual energy usage of five million kWh. Customers participating in this program can earn bill credits equal to 80% of their approved project costs, and those credits can be used to offset one hundred percent of their DSM surcharge while the credits remain. (Tr. pp. 151-155.)

25. Mr. Bumgarner explained how the Company chose the programs to be included in this DSM application. First, he stated that all the chosen programs are currently offered by the Company in other jurisdictions and have positive track records for customer satisfaction, customer participation, and cost effectiveness. He also stated that the program offerings are broad enough to provide the greatest opportunity for customer participation. Finally, he stated, the program services and incentives are designed to tap into firm and dependable DSM resources in Wyoming, as identified by the Company in its DSM potential assessment study (Tr. pp. 156-157.)

26. Mr. Bumgarner stated that DSM programs would be funded by a surcharge that would appear as a line item on customers' bills. He stated that approved program costs and revenues collected through the surcharge will be reconciled in a Wyoming DSM balancing account. The first balancing account adjustment will be filed January 1, 2010, and the application will be accompanied by an annual report. He stated that the Company is proposing a reciprocal carrying charge on the balancing account. Therefore, if the account is under collected, the Company will get interest on the balance and if the account is over collected customers would receive interest. (Tr. p. 158.)

27. According to Mr. Bumgarner, the Company proposes to make three annual report filings over the initial term of the DSM programs. They would be submitted to the Commission on April 30, 2010, April 30, 2011, and July 1, 2012. He stated the Company estimates the costs and savings over the first five years of the DSM programs to be approximately \$34 million and 188,000 megawatt hours. The investment savings would start at \$3 million and 21,000 megawatt hours in the first year growing to \$5.8 million and 32,000 megawatt hours by the end of the second year. The Company will regularly monitor and evaluate the DSM programs to ensure

their performance meets or exceeds their expectations and are being delivered in a cost effective manner. (Tr. pp. 159-160.)

28. Mr. Bumgarner testified that, if the programs were approved, it would take 90 days to make them available to customers. He stated that the Company proposes to have the surcharges begin when program services become available. He also stated that the Company proposes a program effective date of October 1, 2008. (Tr. pp. 160-161.)

29. With respect to the surcharges, Mr. Bumgarner confirmed that the Company intended to have a separate tracking mechanism for each of the three surcharges to account for over/under collections. He also confirmed that the Company will account for actual expenditures and revenues of the DSM programs by each of the three categories specified within the *Stipulation*. He also stated that the balancing accounts and new surcharge schedule would be set out in detail in its tariff filing in compliance with any order the Commission would issue. (Tr. pp. 567; 601-602.)

30. Mr. Gregory Duvall, Rocky Mountain's Director of Long-Range Planning and Net Power Costs, summarized his prefiled testimony and discussed the four classes of DSM. Class 1 programs are those for which capacity savings occur as a result of active company control or advance scheduling; Class 2 programs are those for which energy and capacity savings are achieved through implementation of technological advancements in equipment by providing incentives to customers to upgrade their equipment; Class 3 programs seek to achieve short-duration energy and capacity savings from the voluntary actions of customers due to the company's provision of financial incentives or penalties; and, Class 4 programs use education to achieve energy and capacity reductions. The Company in this case is proposing Class 2 programs. (Tr. pp. 324-325; RMP Exhibit 5 pp. 4-5.)

31. Mr. Brian Hedman, Vice President of Quantec, testified on behalf of Rocky Mountain as to the various tests used by the utility industry to evaluate DSM programs. He stated that DSM is cost effective if the cost of the DSM program is lower than the cost of acquiring additional supply. According to Mr. Hedman, cost effectiveness is calculated by using multiple cost-benefit tests with the results displayed as ratios. When the ratio demonstrates that the benefits compared to the costs are greater than 1, the program is cost effective compared to the alternatives. He stated that it is important to view cost effectiveness from various perspectives. He stated that cost effectiveness is tested from utility, participant, non-participant and all-customers perspectives. (Tr. pp. 336; RMP Exhibit 6 pp. 2-3.)

32. Mr. Hedman testified that the Total Resource Cost Test (TRC) compares the total cost of a supply side resource to the total cost of a DSM program. This test is used to determine if a DSM program is cost effective from an all-customer perspective. He stated that there are costs and benefits associated with both DSM and supply side resources that are not readily quantifiable; so, to account for such costs and benefits, a variation of the TRC is sometimes used. The variation that attempts to account for these non-quantifiable benefits and costs is called the TRC+ Conservation Adder or the Societal Cost Test which, according to Mr. Hedman, imputes the non-quantifiable costs and benefits, frequently through a proportional adder, to the calculated benefits. The adder is used to recognize that air emissions, water impacts, land impacts and

other variables are not easily quantified but have a value greater than zero. Mr. Hedman then described the Utility Cost Test (UCT). This test compares just the portion of the resource paid directly by the Company and recovered in rates. He testified that while the test is useful in determining cost effectiveness from the utilities' perspective, it understates the cost from the customers' perspective since it does not account for the portion of the cost that is borne directly by customers. Mr. Hedman next described (in his pre-filed testimony) the Participant Cost Test (PCT) which compares just the portion of the resource paid directly by participants to the savings realized by the participant. For the participant, bill savings are the realized benefits of DSM rather than the avoided supply side costs. This means the PCT test compares the participants' costs, net of any incentives received from the utility, to the reduction in the participant's bills. The main purpose of this test is to determine whether a particular program design will be attractive to customers. The last test described by Mr. Hedman is the Rate Impact Test (RIT). The RIT test determines the impact a DSM program has on rates. Because the objective of a DSM program is to reduce kWh sales; even when total costs and utility costs are lower with a successful DSM program than with a supply side alternative, rates may increase. This is caused by rates being calculated by dividing utility costs by kWh sales. When sales decline more than costs, the cost per kWh will increase. The RIT test measures this increase in rates. (Tr. pp. 342-343; RMP Exhibit 6 pp. 4-6.)

33. Mr. Hedman testified that, while all the tests provide valuable information in determining the effectiveness of a DSM program, the Company proposes, the TRC test as the standard for measuring DSM program success. He stated that the TRC test is the best for determining cost effectiveness because it compares demand-side and supply-side resources most consistently. He stated that the TRC test is becoming the most common threshold test nationally for determining cost effectiveness. (Tr. p. 368; RMP Exhibit 6 p. 12.)

34. Mr. Hedman concluded his testimony by stating, based on his analysis, all the programs proposed by RMP are cost effective and their approval by the Commission is in the public interest (Tr. p. 380).

35. Mr. Don Jones, Jr., Senior Program Manager of Corporate Long-Term Demand Side Management, testified on behalf of Rocky Mountain regarding the Commission's questions about the Company's Self-Direction program. He stated that customers engaging in new construction projects may be eligible under the Self-Direction program. To determine eligibility the Company would conduct a review of the proposed facility's energy usage. A second review would be conducted to determine the incremental efficiency component. (Tr. p. 381-383.)

36. Mr. William Griffith, Director of Pricing, Cost of Service and Regulatory Operations, testified on behalf of the Company. He summarized the DSM funding mechanism proposed in the *Stipulation*. He stated that the surcharge would be found on Schedule 191 of the Company's tariffs, if approved by the Commission. Under this proposal, customers would be subject to one of three surcharge levels depending on the schedules under which they take service. Residential customers take service under Schedules 2 and 18 and would be subject to an initial surcharge of 2.04%. General Service customers under Schedule 25, Irrigation or Agricultural Pumping Service Schedules 40 and 210, and all Lighting Customers on Schedules 54, 15, 51, 53, 57, 58, 207, 211, and 212 would be subject to an initial surcharge of 0.97%.

Large Nonresidential customers taking service under Schedules 33, 46, and 48 would be subject to an initial surcharge of 0.46%. He stated that the Company forecasted a cost of DSM of approximately \$4.1 million per year over the first two years of the DSM programs. He testified that \$4.1 million, residential customers will contribute approximately \$1.7 million or less than half of the necessary revenue. (Tr. pp. 391; RMP Exhibit 7, p. 4; RMP Exhibit 8.)

37. Mr. Griffith testified that he believed the proposed programs would be cost effective. He also stated that the proposed DSM programs provide benefits to customers in that they will have lower kilowatt-hour sales. He testified that the average residential customer may expect an increase of \$1.35 per month on their monthly bill associated with the DSM surcharge (Tr. pp. 397, 402).

38. Mr. Douglas Marx, Rocky Mountain's Director of Metering Assets and Technology, offered testimony on smart metering and associated costs. He also discussed the difference between smart meters and advanced meters. (Tr. pp. 498-500; 504.)

### WIEC

39. Ms. Catherine Iverson, Senior Consultant at Brubaker & Associates, testified on behalf of WIEC, stating that the *Stipulation* addresses WIEC's concerns and that WIEC supports the *Stipulation* in its entirety (Tr. p 422).

40. Ms. Iverson stated that WIEC's position was that the DSM programs should strive to link the DSM budget to the customer groups participating in each program through the Schedule 191 surcharge. The *Stipulation* directly addresses this concern in paragraph 18, wherein the rate surcharge will be set separately for each of the three major customer groups to reflect costs applicable to each of the groups. She stated the *Stipulation* also gives industrial customers the opportunity to implement DSM measures responsive to their individual needs through the Self-Direct Program and comprehensive energy audits. She stated that the DSM programs should be reviewed over time to assess their effectiveness and costs. The *Stipulation*, she continued, addresses this by providing a detailed plan in paragraph 20 for reviewing the DSM programs with three annual progress reports. She stated that these reports will assist the Commission and the Company in evaluating the DSM programs and will help to determine how to modify and improve those programs. Finally, she stated that the *Stipulation*, in paragraph 16, provides for a comprehensive program review and evaluation on July 1, 2012. (Tr. pp. 422-424.)

### SWEEP

41. Howard Geller, Executive Director of SWEEP, testified that the six programs proposed by Rocky Mountain have been proven effective in engaging customers and producing cost effective energy savings in the Company's other jurisdictions. He stated that the cost recovery mechanism is acceptable and noted he also supported the initial approach proposed by the Company whereby all customers paid the same percentage. Mr. Geller also had several ideas on how to improve the DSM programs that are not part of this application. (Tr. pp. 273, 275-276.)

42. Mr. Geller testified that he supports adoption of the *Stipulation*. Discussing the cost recovery surcharge mechanism proposed in the *Stipulation*, he testified that each customer class will pay only for those programs available to that class. He also stated that approval of the *Stipulation* is in the public interest. (Tr. p. 288.)

#### OCA

43. Mr. Bryce J. Freeman, OCA Administrator, testified on behalf of the OCA. He provided a summary of the *Stipulation* and stated that the *Stipulation* represents a more robust DSM offering than that proposed in the previously rejected *Stipulation* in that there is no cap associated with the DSM programs. Secondly, he stated, the *Stipulation* provides a cost recovery mechanism that minimizes the potential for cross-class subsidies since it is designed to have three distinct customer surcharges each assigned based on customers' classes. He stated that the *Stipulation* is consistent with the philosophy behind cost-based rates in that the surcharges are calculated based on the cost to provide the DSM programs to the various classes. He also stated that the *Stipulation* provides for a thorough review essential to fully exploit the potential of the DSM programs. He concluded that approval of the *Stipulation* was in the public interest. (Tr. 507-513.)

#### LEGAL STANDARDS APPLICABLE IN THIS CASE

44. W.S. § 37-3-112 directs our consideration of services and service regulations:

[E]very service regulation shall be just and reasonable. It shall be unlawful for any public utility to make or permit to exist any unjust discrimination or undue preference with respect to its service, facilities or service regulations. This provision shall not be construed as prohibiting a public utility from establishing classifications which distinguish among its various services, facilities or service regulations if the classifications are not unduly discriminatory among the customers in the same class of service.

We are further guided by W.S. § 37-2-121 which allows utilities to propose innovations which the Commission may consider on a public interest basis:

The rates may contain provisions for incentives for improvement of the public utility's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

45. Because the surcharges constitute rates to be paid by Rocky Mountain's Wyoming customers, we also look to W.S. § 37-3-101, which states:

All rates shall be just and reasonable, and all unjust and unreasonable rates are prohibited. A rate shall not be considered unjust or unreasonable on the basis that it is innovative in form or in substance, that it takes into consideration competitive marketplace elements or that it provides for incentives to a public utility.  
\* \* \* The commission may determine that rates for the same service may vary depending on cost, the competitive marketplace, the need for universally available and affordable service, the need for

contribution to the joint and common costs of the public utility, volume and other discounts, and other reasonable business practices. \* \* \*

46. Our basic and overriding standard in this case is the public interest and the desires of the utility are secondary to it. In *PacifiCorp v. Public Service Commission of Wyoming*, 2004 WY 164, 103 P.3d 862 (2004), the Wyoming Supreme Court, 2004 WY 164 at ¶13, quoted with favor *Sinclair Oil Corp. v. Wyoming Public Service Comm'n*, 2003 WY 22, at ¶9, 63 P.3d 887 (Wyo. 2003):

Speaking specifically of PSC, we have said that PSC is required to give paramount consideration to the public interest in exercising its statutory powers to regulate and supervise public utilities. The desires of the utility are secondary. [Citation omitted.]

47. The Wyoming Administrative Procedure Act, at W.S. § 16-3-107 sets parameters for due process in Commission cases, including the giving of reasonable notice. In accord are W.S. §§ 37-2-201, 37-2-202, and 37-3-106. *See also*, Sections 106 and 115 of the Commission's Rules.

48. Commission Rule Section 119 provides, "Settlement, informal disposition may be made of any hearing."

#### ADDITIONAL FINDINGS OF FACT

49. Many of the facts necessary for our disposition of this case are set forth at length above and will not be restated here.

50. Rocky Mountain Power, OCA, WIEC and SWEEP entered into a *Stipulation* on May 23, 2008, a copy of which is attached hereto and incorporated herein by reference as Appendix A. The *Stipulation* provides that the Company's DSM programs and associated details as reflected in the amended application should be implemented with the modifications described in the *Stipulation*. These modifications to certain details of the Company's amended application are:

a. The *Stipulation* requires the Company to file a report consisting of a comprehensive DSM program review by July 1, 2012.

b. The *Stipulation* requires that the surcharges to fund DSM be set separately for residential, small commercial and large industrial customer groups to reflect the costs of the DSM programs applicable to each group.

51. The Commission finds that the stipulated DSM programs and funding mechanism are reasonable and supported by the evidence of record in this case. Furthermore, the impact upon the various customer classes from the additional surcharge is reasonable and reflects an appropriate recovery of the costs associated with implementation of the DSM programs. As noted in the uncontroverted evidence of record, the proposed surcharge levels for the various customer classes are supported by the Company's evidence at hearing and will result in no cross-

class subsidies. The mechanism for reviewing and adjusting the various surcharges will fairly keep the surcharges from becoming unreasonable either to the Company or its customers

52. The Commission finds the amended application, as revised by the provisions of the *Stipulation* and the supporting testimony, demonstrate that the proposed DSM programs are well conceived and can be implemented to the benefit of the Company's customers and are in the public interest. We find the terms and conditions of the *Stipulation* to be reasonable and that the parties successfully addressed the concerns expressed by the Commission in its orders and otherwise.

53. The *Stipulation* stated, "The DSM programs shall be offered for an **initial term** from October 1, 2008[,] through December 31, 2012." (Emphasis added.) It also provides that, unless terminated by the Commission, the DSM programs will continue as stipulated. The Commission finds that despite the nature of the phrase "initial term", the DSM programs will not expire at the end of this term and the phrase simply defines the time period the comprehensive report is designed to cover. If any or all of the programs are to be terminated, it will be on the facts and not on an automatic sunset.

53. The *Stipulation* requires the filing of several reports during the initial term of the DSM programs followed by a comprehensive report on July 1, 2012. The Company stated that independently conducted third party evaluations will be the basis of these reports and those evaluations would be available upon their completion. The Commission therefore will direct Rocky Mountain to file these evaluations as soon as they are received by the Company. The Commission will also direct the Company to ensure that its reports contain the following information for each program, [i] the kWh saved, [ii] the kW saved, [iii] the participation rate, and [iv] the take rates, all with sufficient detail to clearly show each program's cost effectiveness.

54. Rocky Mountain did not propose or offer any analysis on the viability of a Compact Fluorescent Light (CFL) Program. While the Commission does not make any judgment on the issue in this proceeding the Company will be directed to present a brief written report on the viability of a CFL program by December 1, 2008.

55. The Commission is interested in the Company's opportunities to partner with natural gas utilities in its service territory to leverage its DSM programs in order to provide the greatest benefit to utility customers to control their energy expenditures. Ideally the electric utility and natural gas utilities would consider collaborating on providing DSM opportunities as a "duel fuel" utility. Ms. Hunter had explained to the Commission this concept which RMP and Questar Natural Gas are utilizing in Utah, as an example. The Commission will therefore direct the Company to explore and report on such opportunities by March 1, 2009. During the hearing, testimony indicated the Company was committed to promoting energy efficiency policies by working with governmental entities and encouraging policy makers to adopt energy efficient technology, codes and standards. The Commission will direct the Company to submit its plan to accomplish its goals regarding its partnership with policy makers by December 1, 2008.

56. The Commission finds and concludes that the educational and promotional aspects of DSM are as important as the DSM programs themselves. Therefore, the Commission will direct the Company to provide its educational and promotional materials and the promotion plan it will be using by December 1, 2008. The Commission will also direct that all future promotional/educational materials be filed contemporaneously with their creation. It is the intent of the Commission that all such filings are to be informational in nature and not the subject of review.

57. The Commission retains full jurisdiction to ensure the public interest is served. The parties and others should note that, as part of the Commission's continuing jurisdiction, it will act as proactively as necessary to ensure that DSM continues to serve the public interest. Nothing herein or in the *Stipulation* should be construed as limiting the Commission's continuing jurisdiction. The Commission may require more reports from the Company or alter or discontinue the DSM programs as necessary to carry out its obligation to serve the public interest.

58. The Commission finds that the Company's one pre-existing DSM program, titled "FinAnswer" which it proposes to discontinue and replace with the new FinAnswer. The Company will keep the revenues from each separate. The Commission agrees with the Company and the programs should not be combined but kept separate and the old FinAnswer program should be promptly paid down and discontinued.

59. We find one of the important strengths of the DSM programs proposed in the amended application and the *Stipulation* is that they are not "pilot" programs and their availability to consumers is not limited. This alleviates any artificial rush to participate in a program for fear that it would have reached a participant quota. The programs allow all customers who wish to do so to participate, thus greatly enhancing the potential for their increased acceptance and use.

60. During the hearing the Commission received some information regarding smart metering and smart grids. The Company represented that it could provide the Commission with a more thorough presentation at a later date. The Commission looks forward to the Company's presentation on this topic.

#### CONCLUSIONS OF LAW

61. Some conclusions of law are set out above and will not be repeated here.

62. Rocky Mountain is a public utility, as defined in W.S. § 37-1-101(a)(vi)(C), providing retail electric public utility service under certificates of public convenience and necessity issued by the Commission. Rocky Mountain is subject to the Commission's jurisdiction under W.S. § 37-2-112.

63. Rocky Mountain Power is the registered trade name of PacifiCorp, an Oregon corporation, doing business under that trade name in Wyoming, Idaho and Utah, and under the name Pacific Power in California, Oregon and Washington. The Company's principal place of

business in Wyoming is Casper.

64. Based upon its review of the *Stipulation* and the testimony supporting it, the Commission concludes the provisions of the *Stipulation* constitute, as discussed and modified hereinabove, a just, equitable and reasonable resolution of the outstanding issues coming before the Commission in these proceedings. It should be approved in the form attached hereto.

65. The Commission concludes that the rates and services proposed and approved herein are fair, just and reasonable as required under W.S. § 37-3-101 and 37-3-112, and as allowed by W.S. § 37-2-121.

66. Proper public notice of these proceedings was given in accordance with the Wyoming Administrative Procedure Act, W. S. § 37-2-203 and the Commission's Rules, especially Section 106 thereof. The public hearing was held and conducted pursuant to the provisions of W. S. §§ 16-3-107, 16-3-108, 37-2-203, and applicable sections of the Commission's Rules.

67. The Commission's decisions in this order are supported by the preponderance of the evidence in the record of this case. Although W.S. § 37-2-121 utilizes the lesser substantial evidence standard, the other provisions of Wyoming law on which we rely do not. Consequently, our analyses have all been done to ensure they are supported by the preponderance of the evidence.

IT IS THEREFORE ORDERED:

1. The *Stipulation* in the form attached to this *Order*, marked as Appendix A, and made a part hereof by reference and as discussed hereinabove, is approved. Rocky Mountain Power is authorized to implement its proposed DSM programs and its stipulated funding mechanism on and after October 1, 2008.

2. The surcharges proposed under Rocky Mountain Power's new schedule 191 shall not be charged to customers until the DSM programs are available to customers or October 1, 2008, whichever is later.

3. Rocky Mountain Power is directed to file its DSM tariffs within ten days of the issuance of this *Order*.

4. The Commission directs Rocky Mountain Power to file, as discussed above, all completed independently conducted third party DSM evaluations as soon as they are received by the Company. The Commission hereby directs the Company to ensure that its reports contain the following information for each program, [i] the kWh saved, [ii] the kW saved, [iii] the participation rate, and [iv] the take rates, all with sufficient detail to clearly show each program's cost effectiveness.

5. Rocky Mountain Power shall present a brief written report to the Commission on the viability of a Compact Fluorescent Light program by December 1, 2008.

6. Rocky Mountain Power shall explore opportunities to partner with natural gas utilities in its service territory to leverage its DSM programs and report to the Commission on such opportunities by March 1, 2009.

7. Rocky Mountain Power shall submit its plan to accomplish its goals of promoting energy efficiency policies by working in partnership with governmental entities and encouraging policy makers to adopt energy efficient technology, codes and standards by December 1, 2008.

8. Rocky Mountain Power shall file its educational and promotional materials and the promotional plan it will be using to educate the public and promote DSM by December 1, 2008. All future promotional and educational materials shall be filed contemporaneously with their creation. All such filings are intended to be on an informational basis, as discussed above.

9. This *Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on October 2, 2008.

PUBLIC SERVICE COMMISSION OF WYOMING

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KATHLEEN A. LEWIS, Chairman

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STEVE OXLEY, Deputy Chairman

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MARY BYRNES, Commissioner

(SEAL)  
Attest:

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STEVE MINK, Assistant Secretary