

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Rocky Mountain Power for  
Authority to Increase its Retail Electric Utility Service Rates in  
Utah and for Approval of its Proposed Electric Service Schedules  
and Electric Service Regulations, Consisting of a General Rate  
Increase of Approximately \$161.2 Million per Year, and for  
Approval of a New Large Load Surcharge

Docket No 07-035-93

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TEST YEAR TESTIMONY OF

ROGER J BALL

25 JANUARY 2008

1 Q Who are you, what is your address, and what are your qualifications?

2 A I am Roger J Ball, and my address is 1375 Vintry Lane, Salt Lake City, Utah 84121. My  
3 academic and professional qualifications and professional experience are shown in RJB  
4 Exhibit 1.1.

5 Q What is the purpose of your testimony?

6 A To comply with the requirement in the Commission's 27 December 2007 Scheduling  
7 Order in this proceeding that non-Company parties file direct testimony regarding test  
8 period issues by 25 January 2008.

9 Q Have you read the Application filed by Rocky Mountain Power (RMP, or PacifiCorp, or  
10 Company, or utility) on 17 December 2007 in this Docket?

11 A Yes. RMP bases its request for an increase in its retail rates in Utah of approximately  
12 \$161.2M annually "upon a forecast test year ending June 30, 2009" which it claims is  
13 "(c)onsistent with §54-4-4".<sup>1</sup>

14 Q Does the forecast test year requested by the Company align with the likely rate effective  
15 period?

16 A Given that RMP filed its Application on 17 December 2007, its proposed increase will take  
17 effect after 240 days, or on 13 August 2008, unless the Commission has previously  
18 issued an order granting or revising it.<sup>2</sup> The 27 December 2007 Scheduling Order in this  
19 Docket appears to have been crafted to make it possible for Phase I, the Revenue  
20 Requirement portion of the proceeding, at least to have progressed sufficiently to enable  
21 the Commission to reach a decision in that regard no later than 13 August 2008.  
22 However, hearings in Phase II, the Cost of Service portion, were not scheduled until

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<sup>1</sup> RMP's *Application*, 17 December 2007, in this Docket, 07-035-93 (hereinafter *Application*): paragraph 5, second sentence; and paragraph 12, first sentence.

<sup>2</sup> UCA §54-7-12(3)(c).

1           October, so it is clear that a final order will not issue by 13 August. The Company clearly  
2           understands that, and has asked the Commission to clarify how (and presumably when)  
3           the latter anticipates its decision in Phase I will be implemented.<sup>3</sup> If the utility reaches  
4           agreement on a settlement of this case, it is not impossible that new rates could be  
5           implemented significantly before 13 August. However, it also seems to lie within the  
6           Commission's UCA §54-7-12(3)(c) authority to revise Rocky Mountain Power's proposed  
7           increase to go into effect well after that date. So, at this point, the beginning date of the  
8           rate effective period is quite uncertain. It appears that the Company has merely picked a  
9           test period ending 30 June 2009 as an accounting convenience, and not because it "best  
10          reflects" conditions the utility will encounter during that uncertain rate effective period.<sup>4</sup>  
11          The Commission is required to select the test period "on the basis of evidence",  
12          however.<sup>5</sup> The Utah Supreme Court applied the following standard in the Wage Case:  
13          "Some deference to management judgment is, of course, proper. The commission may  
14          not, however, defer to bald assertions by management."<sup>6</sup>

15    Q    Has the Company indicated its interpretation of §54-4-4?

16    A    Yes. RMP sees that Section "carefully" prescribing "a three step procedural process", in  
17          essence: first, hold a hearing; second, as a result find that rates should be changed; third,  
18          determine appropriate rates. Within that third step, if the Commission selects a test

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<sup>3</sup> RMP's *Petition for Clarification and Reconsideration of the Public Service Commission of Utah's Scheduling Order, as Amended January 9, 2008*, 15 January 2008, in this Docket, 07-035-93: paragraphs 14-19.

<sup>4</sup> UCA §54-4-4(3)(a) and RMP's *Opposition to Request for Hearing on Test Year*, 22 January 2008, in this Docket, 07-035-93: paragraph 13.

<sup>5</sup> UCA §54-4-4(3)(a).

<sup>6</sup> *Utah Department of Business Regulation, Division of Public Utilities, v Public Service Commission of Utah*, No 16241, 19 June 1980, 614 P.2d 1247, quoting *State v Jager*, Alaska, 537 P.2d 1100, 1113-1114 (1975).

1 period, it shall choose the one that, based upon evidence, best reflects conditions the  
2 utility will encounter during the rate effective period.<sup>7</sup>

3 Q Have you an opinion about the utility's interpretation?

4 A The Company seems to think that §54-4-4 requires the Commission to consider whether  
5 existing rates should be changed, holding a hearing for that specific purpose and making  
6 a determination limited to that issue, before going on to think about what they should be  
7 changed to or on what basis. It has been the Commission's practice to roll those "steps"  
8 into one, and I am unsure why the utility wants the further segmentation of this proceeding  
9 that it appears to be asking for, or indeed if does want that, or just what its argument in  
10 support of such a change of practice might be.

11 Q What had Rocky Mountain Power to say in its Application about its Return on Equity?

12 A In Paragraph 10, RMP states that: "In recent years, (it) has consistently under-earned the  
13 authorized ROE established by the Commission"; and in Paragraph 11 it: "contends that a  
14 significant contributor to its under earning is largely the effect of regulatory lag, which  
15 arises from the combined effect of the use of a historic test period and the eight month  
16 administrative process associated with prosecuting a general rate case in the state of  
17 Utah."<sup>8</sup>

18 Q Do you have an opinion about that contention?

19 A In each of its three immediately previous past applications for general rate increases, the  
20 Company has moved the Commission to approve settlement agreements for amounts

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<sup>7</sup> *Opposition to Request for Hearing on Test Year*, 22 January 2008, in this Docket, 07-035-93: paragraph 13.

<sup>8</sup> *Application*, 17 December 2007, in Docket 07-035-93 *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules & Electric Service Regulations, Consisting of a General Rate Increase of Approximately \$161.2 Million per Year, and for approval of a New Large Load Surcharge*.

1 significantly less – averaging 54% of the amounts first requested – than it originally  
2 proposed. In the two most recent of those agreements, the utility agreed to dates certain  
3 before which it would not request a further increase.

4 Only 18 months ago, on 26 July 2006, PacifiCorp dba Rocky Mountain Power petitioned  
5 the Commission to approve a settlement in its most recent previous general rate case:

6 As specified in the Stipulation, the Parties agree that the Stipulation is in the public  
7 interest and that all of its terms and conditions, considered together as a whole,  
8 will produce fair, just and reasonable results.<sup>9</sup>

9 On the same day, the Company filed the Stipulation, to which it was the first-named party:

10 PacifiCorp agrees that it will not file another Utah general rate case before December  
11 11, 2007, which would result in an anticipated rate effective date no earlier than  
12 August 7, 2008.<sup>10</sup>

13 On 14 February 2005, PacifiCorp asked the Commission to approve a Stipulation in its  
14 immediately previous general rate case, Docket 04-035-42, saying that its terms were  
15 “just and reasonable and otherwise in the public interest.”<sup>11</sup> Again the Company was the  
16 first-named signatory and Paragraph 12b of the Stipulation recorded that “PacifiCorp  
17 agrees that its next Utah general rate case will be filed no earlier than March 1, 2006.”<sup>12</sup>

18 And in its general rate case immediately previous to that, Docket 03-2035-02, PacifiCorp  
19 dba Utah Power & Light Company on 7 January 2004 moved the Commission to approve  
20 a settlement agreement.

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<sup>9</sup> *Motion for Approval of Stipulation*, 26 July 2006, in Docket 06-035-21 *In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Rate Schedules & Electric Service Regulations*: paragraph 5.

<sup>10</sup> *Stipulation Regarding Revenue Requirement and Rate Spread*, 26 July 2006, in Docket 06-035-21 *In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Rate Schedules & Electric Service Regulations*: paragraph 12.

<sup>11</sup> *Motion for Approval of Stipulation*, 14 February 2005, in Docket 04-035-42 *In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Rate Schedules & Electric Service Regulations*: paragraph 3.

<sup>12</sup> *Stipulation Regarding Revenue Requirement, Rate Spread and Rate design*, 14 February 2005, in Docket 04-035-42 *In the Matter of the Application of PacifiCorp for Approval of its Proposed Electric Rate Schedules & Electric Service Regulations*: paragraph 2.

1 If Rocky Mountain Power is under earning, therefore, it is doing so on the basis of rates  
2 that it agreed were going to be just and reasonable, and because the Company willingly  
3 restricted its own ability to seek rate relief. Blaming historic test periods and the 240 days  
4 in UCA §54-7-12(3)(c) is merely posturing; PacifiCorp has no one to blame but itself if it is  
5 making an inadequate contribution to Berkshire Hathaway's profits.

6 Q What do you conclude from this series of settlements in the Company's three most recent  
7 previous general rate cases?

8 A The 240-day provision has been in UCA 54-7-12(3)(c) for more than ten years, so the  
9 Company understands it well yet routinely complains about it, as it has inaccurately  
10 attributed its supposed under earnings to "the eight-month administrative process" in its  
11 present Application. The utility has thrice entered into settlement agreements for  
12 increases averaging 54% of those originally requested and with provisions setting dates  
13 before which it would not file for further increases. Even so, the Company has received a  
14 larger portion of its requested increases in these settled cases than in the two  
15 immediately previous cases that were litigated, where it was granted an average of just  
16 42% of the amounts sought. Evidently PacifiCorp routinely asks for increases far greater  
17 than it knows can be justified, or it would not so readily and consistently settle for not  
18 much more than half of its requests. And if it will settle willingly for 54%, clearly a fair  
19 outcome is not in excess of that, and it seems not unreasonable to suppose that just and  
20 reasonable rates lie somewhere south of it, perhaps in the region of 42%, or even less.

21 Q Do you have any other observations about the 240 day period provided in UCA §54-7-  
22 12(3)(c)?

23 A Framing it as an "eight month administrative process" demeans the quasi-legislative and  
24 quasi-judicial nature of regulation and rate-setting of huge monopoly utilities like  
25 PacifiCorp by the Public Service Commission of Utah. The 17 December 2007

1 Application alone fills three 1½ inch and two 3 inch ring binders. During the 9 January  
2 2007 technical conference in which RMP kindly offered to walk regulators and other  
3 interested parties through the accounting exhibits, its own people joined the humour that  
4 some of the spreadsheets were in print so small they should have come with a magnifying  
5 glass. From the Company's description you'd think all that was involved was some  
6 bureaucrat in a sinecure sitting at an empty desk, waiting for a two or three page, and  
7 very straightforward, application to land on it so it could be stamped "APPROVED". It  
8 neglects that: RMP alone holds all the information necessary – must often be coerced  
9 into, and sometimes effectively avoids, sharing it – for the Commission to exercise its role  
10 in protecting the interests of captive ratepayers who have no other option to obtain  
11 electricity; the Company can choose how much time and effort to invest in preparing each  
12 application and when to file it; this utility routinely complains about the magnitude of the  
13 burden it feels subjected to during each general rate case when called upon to timely  
14 answer discovery requests; all its associated costs are treated as regulatory expenses  
15 and passed to customers in rates; and it spends about \$7 in that way for every \$1  
16 appropriated to the Utah Committee of Consumer Services to advocate in the interests of  
17 residential and small commercial ratepayers. It disregards that these proceedings are the  
18 only opportunity for ratepayers to observe how effectively the Utah Division of Public  
19 Utilities discharges its statutory duty to investigate or study upon its own initiative, and  
20 conduct audits and inspections, regarding any matter within the jurisdiction of the  
21 Commission, and represent the public interest in proceedings before the Commission;  
22 and how competently the Committee discharges its statutory duty to assess the impact of  
23 rate changes on, and advocate positions most advantageous to a majority of, residential  
24 and small commercial consumers. Its 27 December 2007 Scheduling Order recognised  
25 the enormity of the task before the Commission, indeed the impossibility of completing it  
26 within 240 days.

1 Q Is there anything more that you would like to say about historic v projected test periods?

2 A Over at least ten years PacifiCorp has frequently pleaded that the contribution it alleges  
3 the use of historic test periods make to regulatory lag is the foundational problem it faces  
4 in earning its authorised rate of return. During the 2003 General Session of the Utah  
5 Legislature it deployed that argument to obtain passage in Senate Bill 61 of the  
6 amendment of UCA 54-4-4(3)(a) to its present reading. However, regulatory lag affects  
7 ratepayers, too: when a utility is over earning, ratepayers must wait for reduced rates  
8 while the “administrative process” operates. It is to be expected that a utility which has  
9 decided to seek an increase will want to see it in rates as soon as possible, and that it will  
10 advance every argument it can think of to promote that objective. The evenhanded  
11 balancing of the utility’s interest in increasing its earnings with the ratepayers’ interest in  
12 paying no more than just and reasonable rates suggests that the regulatory process be  
13 allowed to take enough time for the Commission to examine all the information, evidence  
14 and recommendations that all interested parties wish to offer.

15 Q Please comment about another element of the contention regarding regulatory lag in  
16 Paragraph 11 of Rocky Mountain Power’s Application: the “use of a historic test period”.

17 A Rocky Mountain Power has actually used an historic test period – the twelve months  
18 ending 30 June 2007 – as a basis to forecast the test period requested in its Application.  
19 Consequently every other party must not only examine the Company’s historic data, but  
20 the validity of the factors the Company has chosen to use in projecting its figure forward  
21 24 months and the accuracy of its calculations. This is all extra work to be squeezed into  
22 240 days and budgets that cannot be passed on to someone else as regulatory  
23 expenses.

24 Q What had Rocky Mountain Power to say in its Application in support of using a projected  
25 test year?



1 A RMP policy witness and President Walje testifies that: “*a forecast test period is essential*  
2 to recognize the costs that the Company will incur when the new rates become effective”.  
3 (Emphasis added.) However, I have yet to find any evidence in the Application, the  
4 associated testimony, or exhibits, to support the conclusion that a projected test year is  
5 *essential* for that purpose. The Commission has repeatedly over many years in many  
6 cases found that rates resulting from historic test years were just and reasonable.

7 Mr Walje goes on to say that:

8 There are several proposals in this application intended to *reduce the Company’s*  
9 *financial risk* to acceptable levels while operating the Company during a major  
10 construction program. We are asking the Commission to approve the use of a  
11 forecast test year in setting the Utah revenue requirement.

12 During Utah Power & Light Company’s major generation and transmission construction  
13 and acquisition programme prior to its takeover by PacifiCorp, it apparently found the  
14 financial risk associated with building and purchasing all or part of several power stations  
15 and high-voltage lines to be acceptable, despite rates being based upon historic test  
16 periods and the associated regulatory lag.

17 Q Has this Commission previously set rates for PacifiCorp on the basis of a projected test  
18 year?

19 A No. The Company has filed its three most recent previous applications, and now this one,  
20 asking the Commission to do so. However, the stipulations in those three previous  
21 proceedings were “black box” settlements without specified test periods. In previous  
22 litigated PacifiCorp general rate cases, the Commission determined Return on Equity  
23 (RoE) based upon the risk to which stockholders were exposed when future rates were  
24 based upon historic test periods. If the Commission, in selecting a test year in this  
25 proceeding in accordance with revised UCA 54-4-4(3), chooses to adopt anything other

1 than an historic test year, it should balance this shift of risk by commensurately reducing  
2 RoE.

3 Q Does the move from an historic to a projected test year carry any monetary value?

4 A Rocky Mountain Power test year witness McDougal apparently values the 24 month  
5 forward projection at almost \$89M. In requesting a test year ending 30 June 2009, the  
6 Company is asking the Commission to transfer risk to the value of that amount from its  
7 stockholders to its ratepayers. If the Commission does select a test period and determine  
8 revenue requirement in this proceeding, as opposed to addressing a settlement  
9 agreement as it has eventually been asked to do and done in every PacifiCorp general  
10 rate case since passage of Senate Bill 61 in 2003, it will be the first time that it has  
11 tackled the transition from historical to projected test period rather than looking at a black  
12 box stipulation with most, if not all, parties recommending approval.

13 Q Are there other reasons why the Commission should look with scepticism upon the  
14 Company's request to base rates on a forecast test period?

15 A During a hearing in a previous proceeding concerning another company, then  
16 Commission chairman Campbell observed that "if I were an employee of the Company, I  
17 guarantee you I could give you a forecast every time that shows I'm not over earning."<sup>13</sup>

18 For some reason, regulators seem to have decided that Senate Bill 61 requires the  
19 determination whether a utility is over or under earning to be based upon projected rather  
20 than actual numbers. UCA 54-4-4(3)(a) doesn't require that. The Division and  
21 Commission should be looking at and publishing actual RoE on a regular basis.

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<sup>13</sup> *Transcript of Proceedings*, 17 May 2006, in Docket 05-057-T01 *Joint Application of Questar Gas Company, the Division of Public Utilities and Utah Clean Energy for the Approval of the Conservation Enabling Tariff Adjustment Option and Accounting Orders*: page 146, lines 21-23.

1           And is anyone comparing the actual numbers realised by utilities with those projected for  
2           the purpose of requests for rate increases and publishing those?

3    Q    Do you have a recommendation for the Commission?

4    A    If the Commission selects the test period recommended by Rocky Mountain Power in this  
5           Docket, it should adjust RoE downwards by about \$89M to restore that balance. That  
6           concludes my pre-filed written direct test year testimony, thank you.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Test Year Testimony of Roger J Ball in Docket 07-035-93 was served upon the following by electronic mail on 25 January 2008:

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