BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	))))))))))	DOCKET NO. 09-035-15 Exhibit No. DPU 6.0 SUR Surrebuttal Testimony of David Thomson

THE DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH

Surrebuttal Testimony of

David Thomson

December 15, 2016

1 **Q. Please state your name, business address and title.**

2 A. My name is David Thomson. My business address is 160 East 300 South, Salt Lake City,
3 Utah 84114. I am a Technical Consultant in the Utah Division of Public Utilities (Division,
4 or DPU).

5 **Q. On whose behalf are you testifying?**

6 A. The Division.

7 **Q. Did you previously file testimony in this Docket?**

8 A. Yes, I filed direct testimony on September 21, 2016.

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to respond to the rebuttal testimony of witness Mr. Michael
11 G. Wilding regarding Rocky Mountain Power's ("the Company") use of retroactive
12 ratemaking adjustments in the EBA. I will also respond to Mr. Wilding's testimony and Mr.
13 Phillip Hayet's testimony regarding imprudent outages. Mr. Hayet testified in behalf of the
14 Office of Consumer Services ("Office").

15

16 **Retroactive Ratemaking**

17 **Q. Mr. Wilding in his testimony discusses accounting and operating periods. Does the**
18 **EBA tariff mention operating period or two types of periods?**

19 A. No.

20 **Q. As to period, what is the tariff defined period?**

21 A. The tariff mentions an EBA Deferral period. It states that an EBA Deferral Period is:

22 The calendar year prior to the EBA Filing Date. The first EBA Deferral Period shall
23 be the three-month period from October 1 to December 31, 2011.[1]
24

25 After the first deferral period, the tariff defines one period for the EBA, which is a calendar

26 year accounting period. Actual NPC and wheeling revenues are specific to that deferral

27 period.

28

29 Using Mr. Wilding's non-tariff construct of two accounting periods he states:

30 Once the checkout process has been completed for that transaction, an adjusting
31 accounting entry is made in a later accounting period but with an operating period
32 that corresponds to the underlying transaction.[2]
33

34 Thus, under this construct, the deferral period is not only a specific calendar period but can

35 be a calendar period with NPC from prior periods ("operating" periods). Thus the deferral

36 period starts at EBA inception and never ends. For example in the Company's 2015 EBA

37 application filed in 2016, the Company corrected an initial NPC accounting entry recorded in

38 the 2011 EBA stub accounting period[3] in the calendar year 2015 actual NPC deferral period.[4]

39 This "operating" period was an NPC deferral period finalized by Commission order. Under

40 Mr. Wilding's EBA accounting construct, the deferral period NPC can be a hodgepodge of

41 current year actual NPC along with prior period NPC through cost adjustments, even if those

42 costs are from finalized deferral periods.

43

[1] Electric Service Schedule No. 94, Definitions, Original Sheet No. 94.2
[2] Rebuttal Testimony of Michael G. Wilding, November 16, 2016, lines 187 to 189.
[3] Mr. Wilding characterizes this as an "operating" period.
[4] Mr. Wilding characterizes this as an "accounting" period.

44 Mr. Wilding's discussion of accounting and operating periods and how they are used to
45 obtain Company deferral period actual NPC is not supported by tariff language and should
46 not be permitted as a reason to override retroactive ratemaking principles.
47

48 **Q. Mr. Wilding quotes Utah Code Section 54-7-13.5(4)(c) in his testimony. Is this**
49 **applicable to the Division's retroactive ratemaking argument?**
50 A. No. My direct testimony explains in detail the Division's retroactive ratemaking argument.
51 This Utah Code Section is not applicable to the Division's retroactive ratemaking concerns.
52

53 **Q. Mr. Wilding quotes Utah Code Section 54-7-13.5(2)(c)(ii) as support for the Company's**
54 **method of including accounting entries from final deferral periods into future deferral**
55 **periods as not being retroactive ratemaking. Do you agree?**
56 A. I agree that once an EBA is established for an electrical corporation that the Corporation:

57 shall file a reconciliation of the energy balancing account with the commission at
58 least annually with actual costs and revenues incurred by the electrical corporation.[5]
59

60 I do not agree with Mr. Wilding's use of the word reconciliation. In his testimony Mr.
61 Wilding states that:

62 as a balancing account, the EBA facilitates reconciliation when new information is
63 available for inclusion in rates.[6]
64

[5] Utah Code Section 54-7-13.5(2)(c)(ii).
[6] Rebuttal testimony of Michael G. Wilding, November 16, 2016, lines 211 to 213.

65 My understanding is that the established balancing account is reconciling actual NPC and
66 wheeling revenues to base NPC and wheeling revenues for the annual period. If the
67 reconciliation produces a difference one way or the other an over or under recovery of
68 allowed costs and revenues that is shown in the balancing account and remains there until
69 charged or refunded to customers.[7] Reconciliation as used in the Statute has nothing to do
70 with new information that is available for inclusion in already-established and finalized rates
71 or updates. "New information" and "updates" are terms that are not found in the Statute or
72 the Tariff. Neither the Tariff nor the word reconciliation in the Statute supports the
73 Company's retroactive ratemaking.
74

75 **Q. Mr. Wilding does not agree that "final rates" should be interpreted to mean that NPC is**
76 **finalized for the Deferral period.[8] Do you have a comment about this statement?**
77 A. Yes, the Merriam-Webster Dictionary defines final as follows:
78 1: not to be altered or undone, 2: ultimate, 3: relating to or occurring at the end or
79 conclusion.[9]
80
81 When the Commission said final in its first EBA order, the above definition describes what it
82 meant. If the Commission did not mean final it would have used some other term. It did not.
83 Also, all Commission Orders since the inception of the EBA balancing account have stated
84 that final rates set by the balancing account are just and reasonable and in the public interest.
85 All of the above points to NPC for the deferral period as being final. Thus being final,
86 including NPC adjustments from prior final deferral periods into a current deferral period is

[7] Utah Code Section 54-7-13.5 (4)(a).
[8] Rebuttal testimony of Michael G. Wilding, November 16, 2016, lines 215 to 217.
[9] The Merriam-Webster Dictionary. Copyright at 1998 Merriam-Webster, Incorporated. Page 195.

87 retroactive ratemaking. The time for including accounting entries or truing up of NPC and
88 wheeling revenue from prior year deferral periods has terminated when the Commission has
89 issued an order on a deferral period to set final rates. The EBA is set up to finalize rates on a
90 yearly basis with rates to be effective every November 1 upon Commission approval. This is
91 done so that there is finality of rates.
92
93 **Q. Do you agree with Mr. Wilding's statement that not allowing retroactive ratemaking**
94 **would unnecessarily complicate the EBA[10]?**
95 A. No. The Division in its evaluation reports and in its yearly filed audit reports has consistently
96 emphasized the complexity of the EBA. Complexity should not be a standard for denying
97 efforts to make the calendar year actual NPC as accurate as possible through updating of
98 actual NPC filed if that updating is done **before** the deferral amount is deemed final. The
99 Company in the last EBA filing (2015 EBA deferral period filed in 2016) updated its NPC
100 filing as part of its August 18, 2016 testimony. However, once actual NPC have been
101 deemed by Commission order to be final, NPC adjustment amounts flowing out of that final
102 period into future period amounts should not be permitted. To do so would be retroactive
103 ratemaking.
104
105 **Q. In his testimony, Mr. Wilding suggests that not allowing retroactive ratemaking would**
106 **create a disconnect between cost and benefits. Is this statement correct?**

[10] Rebuttal testimony of Michael G. Wilding, November 16, 2016, lines 225 to 226.

107 A. No. In his testimony Mr. Wilding gives two examples to illustrate what he calls a
108 "disconnect" between cost and benefit. One of the illustrations had to do with a severance
109 tax accrual and the other an over accrual of estimated line losses. If you read his
110 explanations of the two transactions it is apparent that these entries were not done to
111 "connect" cost and benefits but were done to correct prior period initial accounting entries.
112
113 Taking the two correcting adjustments explained in Mr. Wilding's testimony[11] back to the
114 prior year period to which they applied would have in one example decreased NPC and in the
115 other example increased NPC in the applicable period.
116
117 If you allow this kind of an adjustment you do not have a clean accounting of actual NPC for
118 a given deferral period if prior period NPC adjustments are allowed into another period. As I
119 stated earlier in my testimony the current period becomes a hodgepodge of costs of current
120 and prior deferral periods. It is not a clean one year actual NPC deferral period accounting.
121
122 The above clarification and explanation also applies to Mr. Wilding's discussion of an EIM
123 disconnect. In his testimony he admits that the 55 business Day EIM statement accounting
124 entry is a true-up as would be any adjusting entries or true-ups pertaining to the 9, 18, 35, and
125 36 month "optional daily reruns" EIM statements. If made, these EIM cost true-up or

[11] Rebuttal testimony of Michael G. Wilding, November 16, 2016, lines 260 to 278.

126 adjustments are not to "connect" EIM cost and benefits but correct initial GAAP accrual
127 accounting entries originally made to an applicable accounting period.
128
129 The Company in its GAAP accrual accounting had the opportunity to match costs with
130 revenue for a yearly accounting period and to have its actual NPC and wheeling revenue
131 accounting as correct as possible prior to stipulating that its EBA recovery amount for a
132 yearly deferral period was just and reasonable and in the public interest. Its adjustments are
133 not connecting costs and benefits but are prior period correction or true-up entries. The
134 Company's "disconnect" argument should be rejected by the Commission as a reason for
135 permitting retroactive ratemaking. While the exclusion of these prior period adjustments
136 might leave some costs uncollected or leave the utility with some windfalls, these are
137 insufficient reasons to override the need for finality in ratemaking and for EBA filings to
138 contain only one year's results. Rates should be final and the Company's prior period
139 adjustments should not be allowed to override this ratemaking principle.
140
141 **Q. Do you have a final comment about the Company's use of prior period adjustments?**
142 A. Yes. If the Company believes that its prior period accounting adjustments qualify, it has the
143 option to file for a deferred accounting order with the Commission to seek the recovery of the
144 adjustment costs in future rates.
145
146 **Imprudent Forced Outages**

147 **Q. In its Direct Testimony what was the Division's recommendation for imprudent**
148 **outages?**
149 A. The Division recommended that:

150 Second, the Commission should specifically clarify that ratepayers should not pay
151 outage-related expenses for imprudent outages, whether the imprudence is due to the
152 Company's direct actions or the actions of its agents or contractors.[12]
153

154 **Q. What was Mr. Wilding's and Mr. Hayet's response to the first part of the above**
155 **recommendation regarding imprudent outages?**
156 A. As to the first part of the recommendation that the Commission should specifically clarify
157 that ratepayers should not pay for imprudent outages due to the Company's direct actions,
158 both believe such a recommendation is not necessary because:
159 "the Company agrees that it can only recover prudently incurred costs"[13] and as Mr.
160 Hayet said, "I have no reason to suspect that the Commission does not already agree with
161 this."[14]
162

163 **Q. What were their responses to the second part of the recommendation that the**
164 **Commission specifically clarify that ratepayers should not pay outage-related expenses**
165 **for imprudent outages due to the actions of its agents or contractors.**
166 A. Mr. Wilding does not respond to this recommendation. He does state in his testimony:

167 that the determination of prudence in the case of plant outages should be considered
168 based on the unique circumstances of each outage on a case-by-case basis.[15]

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[12] Direct Testimony of David Thomson, September 21, 2016, lines 181 to 183.
[13] Rebuttal Testimony of Michael Wilding, November 16, 2016, line 315.
[14] Rebuttal Testimony of Philip Hayet, November 16. 2016, lines 170-171.
[15] Rebuttal Testimony of Michael Wilding, November 16, 2016, lines 316 to 318.

169

170 Mr. Hayet responds to this recommendation in his rebuttal testimony and he explains why he
171 believes PacifiCorp should be held accountable for imprudent outages caused by outside
172 contractors and outside plant operators.[16] He also puts forth an example of how clarity from
173 the Commission would be worthwhile.[17] In his testimony he says:

174 But, in fairness to the Company, I think that the Commission should also make it clear
175 that it would evaluate all proposed imprudence disallowances based on the facts and
176 circumstances of each outage.[18]
177

178 Q. Does the Division agree with Mr. Wilding and Mr. Hayet that imprudence should be
179 determined on a case-by-case basis?

180 A. Yes.[19]

181

182 Q. Will you please restate below from your Direct Testimony where the Division explains
183 its reasons why the Company should be held accountable for imprudent outages caused
184 by outside contractors and outside plant operators and why the Division recommends
185 the Commission should specifically clarify this matter?

186 A. Yes. The Daymark memo filed as an exhibit to my direct testimony states the following:

187 Yes. In some cases, when outages have occurred at a jointly-owned plant operated by
188 a third party, or as a result of negligence by an outside contractor working on the unit,
189 the Company has argued that it is unreasonable to penalize PacifiCorp for a third

[16] See Rebuttal Testimony of Philip Hayet, November 16, 2016, lines 190 to 207.
[17] See Rebuttal Testimony of Philip Hayet, November 16, 2016, lines 172 to 186.
[18] Rebuttal Testimony of Philip Hayet, November 16, 2016, lines 184 to 186.
[19] Direct Testimony of David Thomson Exhibit 6.1, Daymark Memo, Page 3 Second Paragraph, dated September 21, 2016. "All imprudent outages are avoidable, but not all avoidable outages are necessarily imprudent. We do not believe that the Company should be held to a "perfection standard" wherein any human error or misjudgment leading to an outage is deemed imprudent and punished with disallowance. For an individual outage to be deemed imprudent, we believe that it must be avoidable to an extraordinary degree. As with many prudence determinations, this is a necessary subjective standard that can only be determined on a case-by-case basis."

190 party's performance when PacifiCorp has no contractual ability to seek recourse from
191 that third party. We disagree. PacifiCorp recovers the cost of its investment in owned
192 and jointly owned generation resources, and earns a return or profit on that
193 investment. As an owner, the Company is responsible for the performance of that
194 asset, and cannot and does not absolve itself of that responsibility simply because it
195 has delegated the operation or repair of that asset to another entity. Certainly, as
196 between the Company and its ratepayers, the Company is in a much better position to
197 influence the operation of plants where it is not the operator. If the Company operated
198 in a regulatory system without an EBA the Company would not recover any of the
199 replacement power costs related to the forced outage.

200 The Company, either directly or through agreement, choses (sic) to enter into a
201 contract with the third party and the Company is in a position to negotiate favorable
202 terms with that third party whereas the ratepayer is not. Many operating agreements
203 contain provisions that require the chosen operator to follow Good Utility Practice or
204 otherwise perform its duties prudently. If PacifiCorp entered into a contractual
205 arrangement that provided it with no recourse for negligent acts, so be it. Such a
206 contract provision is imprudent. Ratepayers should not be required to absorb the
207 costs of negligent operation or imprudent contracting.[20]

208

209 My direct testimony also states:

210 In short, the Company is responsible for providing service and as between its
211 customers and the Company, the Company is best-positioned to ensure adequate and
212 prudent performance by its commercial agents and partners. The risk of those
213 business relationships is the Company's risk, not ratepayers' risk.[21]

214

215 As noted above in the Daymark Memo, that in response to certain outages, the Company has
216 argued that it is unreasonable to hold it responsible for third party performance and, instead,
217 asks that the risk be borne by ratepayers. The Division disagrees and requests Commission
218 clarification on this matter so that this disagreement can be put to rest. In short, the
219 Commission should clarify that the Company may bear the risk of imprudent outages caused
220 by its agents and partners when facts warrant on a case-by-case basis.

[20] Direct Testimony of David Thomson Exhibit 6.1 Daymark Memo, September 21, 2016, page 4.
[21] Direct Testimony of David Thomson, September 21, 2016, lines 174 to 177.

221

222 **Q. Does that complete your testimony?**

223 A. Yes.