

BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

_____)
IN THE MATTER OF THE)
APPLICATION OF ROCKY)
MOUNTAIN POWER FOR APPROVAL) DOCKET NO. 09-035-15
OF ITS PROPOSED ENERGY COST)
ADJUSTMENT MECHANISM)
_____)

Surrebuttal Testimony and Exhibits of

Maurice Brubaker

On behalf of

Utah Industrial Energy Consumers

Project 9124
October 13, 2010



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Surrebuttal Testimony of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q ARE YOU THE SAME MAURICE BRUBAKER WHO PROVIDED DIRECT**
5 **TESTIMONY ON AUGUST 4, 2010 AND REBUTTAL TESTIMONY ON**
6 **SEPTEMBER 15, 2010?**

7 A Yes, I am.

8 **Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

9 A I am appearing on behalf of the Utah Industrial Energy Consumers (“UIEC”).
10 Members of UIEC purchase substantial quantities of electricity from Rocky Mountain
11 Power Company (“RMP”) in Utah, and are vitally interested in the outcome of this
12 proceeding.

1 **Q WHAT IS CONTAINED IN YOUR SURREBUTTAL TESTIMONY?**

2 A My surrebuttal testimony will respond to certain positions taken by Charles E.
3 Peterson on behalf of the Division of Public Utilities (“Division”), Nancy Kelly on behalf
4 of Western Resource Advocates and Utah Clean Energy (“WRA/UCE”), Daniel
5 Gimble on behalf of the Office of Consumers Services (“Office”) and Gregory Duvall
6 on behalf of Rocky Mountain Power Company (“RMP”) in their rebuttal testimonies.

7 **Response to Division Witness Peterson**

8 **Q AT PAGE 4 OF HIS REBUTTAL TESTIMONY, MR. PETERSON SUGGESTS THAT**
9 **YOUR PROPOSAL CONCERNING MONITORING OF PERFORMANCE**
10 **STANDARDS WILL INCREASE THE BURDEN ON THE REGULATORS AND THE**
11 **COMPANY, AND THAT YOU HAVE NOT QUANTIFIED ANY JUSTIFICATION FOR**
12 **THE PROPOSAL. BEFORE RESPONDING IN DETAIL TO MR. PETERSON,**
13 **PLEASE SUMMARIZE THE PURPOSE OF YOUR PROPOSED PERFORMANCE**
14 **STANDARDS.**

15 A As I explained in my direct testimony, if an ECAM is adopted the cost recovery will
16 move from base rates to the ECAM which will change the incentives faced by the
17 utility. The incentive to be efficient and control costs is less when a utility is allowed
18 to pass-through all, or substantially all, of its incurred costs to customers. When the
19 utility must retain these costs and manage them in base rates, the incentive which the
20 utility has is maximized because any increases or decreases in the level of costs are
21 retained by stockholders.

22 The performance targets which I have suggested are on RMP’s low-cost
23 resources, namely, coal generation, owned or controlled coal mines and wind
24 generation. If RMP does not achieve the performance target for each of these

1 resources, then before cost recovery through ECAM is allowed, it would be required
2 to explain the shortfall and/or show that it acquired appropriate substitute resources
3 on a least cost basis. The specific performance targets reflect the level of operation
4 that RMP was able to achieve when it was completely at risk for any subpar
5 performance, as compared to what occurred during rate cases. Thus, the concept of
6 these minimum performance standards is to try to provide some assurances to
7 customers that operating performance will not degrade under a regulatory paradigm
8 which includes an ECAM.

9 **Q CAN YOU PROVIDE EXAMPLES OF ANY SITUATIONS WHERE THE**
10 **PERFORMANCE OF GENERATING ASSETS CHANGED WHEN THE**
11 **REGULATORY PARADIGM WAS SHIFTED FROM “UTILITY AT RISK” TO**
12 **AUTOMATIC ADJUSTMENT MECHANISM, OR VICE VERSA?**

13 A Yes. The experience of Exelon (Commonwealth Edison Company) with its nuclear
14 units is one that is often cited in this regard. With 12 nuclear units, Commonwealth
15 Edison was one of the largest nuclear operators in the country. Yet, during the 1970s
16 and 1980s it struggled to keep these facilities in good operating order, with the fleet
17 typically experiencing capacity factors of 60% or below. At the end of 1997,
18 Commonwealth Edison’s request to cancel its fuel adjustment clause was approved
19 by the Illinois Commerce Commission. By the time that it spun off its nuclear units to
20 an affiliate (2001) as a result of the adoption of retail choice in Illinois, it had managed
21 to achieve an average capacity factor of 69% over the period 1989 through 1999.
22 (Page 7 of the direct testimony of Edison witness Robert McDonald in Illinois
23 Commerce Commission Docket No. 00-0361.) From 2002 to 2004, the affiliate had
24 fixed prices for selling the output of these units to Commonwealth Edison based on

1 an assumed capacity factor of 85%. This put performance risk on the nuclear
2 operator (the affiliate). Prices thereafter were to be set at prevailing market rates.

3 Exelon recently reported that for each of the seven years 2003 through 2009,
4 its nuclear generation fleet experienced average annual capacity factors in excess of
5 93%. (www.exeloncorp.com)

6 While there may have been other factors in play, the dramatic improvement in
7 performance that occurred when the nuclear operator was taking all of the
8 performance risk is a clear demonstration of what can happen with a change in
9 incentives.

10 **Q PLEASE NOW RESPOND TO MR. PETERSON'S SPECIFIC CONCERN.**

11 A First, it should be noted that the ECAM audit proposed by Mr. Peterson will increase
12 the burdens on both regulators and the Company, yet Mr. Peterson did not feel
13 compelled to quantify the costs and benefits of his proposals. Nor should he (or I)
14 have to make such a showing. At issue are annual costs in excess of \$400 million to
15 Utah customers that are going to be subject to adjustment between rate cases
16 without full regulatory review. The failure to detect even a small number of
17 inappropriate actions (or inactions) could cost customers millions of dollars.

18 The full extent of the possibility for adverse impact on customers is not
19 knowable or quantifiable, but a recognition of the magnitude of the dollars that are at
20 issue in the ECAM should be sufficient to conclude that a significant amount of
21 regulatory attention needs to be focused on these costs.

1 **Q ON PAGE 4 OF HIS REBUTTAL TESTIMONY MR. PETERSON ARGUES THAT**
2 **UNDER YOUR STANDARD, THE UTILITY WOULD BE EXPECTED TO FAIL 50%**
3 **OF THE TIME. HOW DO YOU RESPOND?**

4 A First, I should note that the performance standard is not a “pass or fail” test in the
5 ordinary sense of the word that Mr. Peterson may be using as a shorthand
6 description. Rather, the specific level of performance standard is designed to be a
7 means of focusing attention on the operation resources with low operating costs. As I
8 have explained, performance less than the standard does not automatically result in a
9 disallowance, but results in a specific requirement for RMP to demonstrate that it has
10 operated and maintained its generation fleet prudently and acquired appropriate
11 substitute resources on a least-cost basis when performance is below the level of the
12 standard. It also requires prudent management of its purchased power contracts.

13 Furthermore, as Mr. Peterson even notes, these standards provide RMP with
14 an added incentive to improve the performance of the low-cost resources. In my
15 view, that is a very positive attribute that should be good for customers.

16 **Q WHAT ELSE DOES MR. PETERSON SAY?**

17 A Mr. Peterson goes on to proclaim that under my proposal “...by definition, one half of
18 the Company’s mines and coal-fired plants would be scrutinized for imprudent
19 operations each year when the Company seeks ECAM recovery” (Peterson rebuttal
20 at page 4). It is not at all clear what Mr. Peterson is attempting to convey. With or
21 without my proposal, an auditor certainly would be expected to examine the operation
22 of all of the Company’s mines and coal-fired plants, at least at a high level. The
23 extent of further scrutiny will depend upon what that preliminary review reveals.

1 Q AT SEVERAL POINTS IN HIS REBUTTAL TESTIMONY MR. PETERSON
2 SUGGESTS THAT YOUR PROPOSAL WOULD "PUNISH" RMP. DO YOU
3 AGREE?

4 A No, I do not. The purpose of the performance standards that I have suggested is to
5 focus attention on the performance of RMP's low-cost resources; in particular, the
6 coal-fired generating fleet and the output of coal from Company owned or controlled
7 mines. Contrary to Mr. Peterson's suggestion, there is no automatic penalty or
8 disallowance for not achieving the performance standard in any given year. Rather,
9 the purpose of the performance standards is to focus attention on the operation of the
10 low-cost resources and to highlight performance if it is less than the standard. The
11 purpose is to protect customers, not to penalize stockholders.

12 Q WHAT WOULD HAPPEN IN A GIVEN YEAR IF PERFORMANCE WERE LOWER
13 THAN THE STANDARD?

14 A If performance is below the standard, then in order to collect the costs incurred to
15 replace the output shortfall, RMP only must establish that it operated, maintained and
16 managed its resources prudently, and that it acquired appropriate substitute
17 resources on a least cost basis. If it makes this showing then there is no
18 disallowance.

1 Q ONE EXAMPLE MR. PETERSON GAVE WAS THE REDUCED OUTPUT FROM
2 COAL-FIRED GENERATING RESOURCES IN 2009, WHICH HE SAYS
3 "...APPARENTLY..." IS THE RESULT OF A DECLINE IN LOAD AND THE
4 BRINGING ON OF ADDITIONAL WIND GENERATION. UNDER YOUR
5 PROPOSAL, WOULD THIS CIRCUMSTANCE AUTOMATICALLY CAUSE A
6 DISALLOWANCE OF COSTS?

7 A No. If those are indeed the factors which caused the reduced output of the coal-fired
8 generation fleet, it certainly would not cause a disallowance. And, if those were the
9 facts, it should not be burdensome for RMP to demonstrate that this was the case.

10 Q MR. PETERSON ALSO EXPRESSES CONCERN ABOUT THE PERFORMANCE
11 STANDARD FOR WIND RESOURCES. WHAT IS THE BASIS FOR
12 PERFORMANCE STANDARDS ON WIND GENERATION?

13 A The economic basis for wind generation (owned or purchased through a PPA) is that
14 the relatively low variable cost generation will offset the high capital costs of the wind
15 turbine installation plus the costs of necessary additional transmission investment.
16 With capital costs for the wind generation investment (excluding transmission)
17 running at more than \$2,000 per kW, realization of the expected benefits depends
18 upon actual wind generation levels approaching those that were assumed in justifying
19 the investment. The reality is that RMP made the assumptions and conducted the
20 economic analysis that led to the decision to add the particular wind generation
21 resources. RMP needs to be held accountable for the performance of those
22 assumptions, and if wind generation fall short of expectations, RMP needs to justify
23 those shortfalls.

1 Q MR. PETERSON'S SPECIFIC CONCERN SEEMS TO ARISE FROM THE
2 VARIABILITY OF WIND FROM YEAR TO YEAR. HOW DO YOU RESPOND?

3 A At page 8 of my direct testimony I recognized that there is limited experience with
4 wind resources and that it may be appropriate to adjust the performance measures to
5 recognize actual performance as more experience is gained. And, as noted above,
6 the performance targets are not triggers for disallowances but are designed to focus
7 attention on performance aspects that appear to be less than expected or less than
8 historic. It is not designed to "punish" RMP, or to be a second "prudence review."
9 Rather, the performance standards are intended to focus attention on the operation of
10 low-cost resources and to provide added protections for customers who now would
11 be asked to pay for increased costs outside of a general rate proceeding.

12 In addition, it should be recognized that RMP has a fairly diverse portfolio of
13 wind generation resources. This means that abnormally low wind in one geographic
14 location may be offset by abnormally high wind in another location. Since the
15 performance standard is based on the fleet-wide average, and not on individual wind
16 farms, this reduces the problem of wind variability.

17 **Response to WRA/UCE Witness Nancy Kelly**

18 Q AT PAGE 16 OF HER REBUTTAL TESTIMONY, MS. KELLY SUGGESTS THAT
19 YOU HAVE NOT EXPLAINED WHY YOU HAVE EXCLUDED GAS GENERATION
20 FROM YOUR PERFORMANCE CRITERIA. WHAT IS THE REASON?

21 A The reason is that from an operating perspective gas-fired generation is not a low-
22 cost resource. The performance standards were focused on the low-cost resources
23 in an effort to ensure that performance did not deteriorate to the detriment of
24 customers.

1 The low-cost resources are the coal fleet (and the related Company owned or
2 controlled coal mines) and the wind resources. In order to minimize operating costs,
3 these resources should generally be operated whenever they are available. Thus, a
4 performance standard based around these resources constitutes the appropriate
5 design. Gas-fired generation should be operated when necessary from a reliability
6 perspective, a load-following perspective or when the dispatch cost of these
7 resources is less than the cost of purchasing resources in the wholesale market.
8 Gas-fired generation does not lend itself to the same type of performance standards
9 as do the coal and wind resources.

10 **Response to Office Witness Daniel Gimble**

11 **Q AT PAGES 10 AND 11 OF HIS REBUTTAL TESTIMONY, MR. GIMBLE**
12 **EXPRESSES SOME CONCERN THAT YOUR PROPOSAL COULD PRODUCE**
13 **ADVERSE CONSEQUENCES SUCH AS THE UTILITY RUNNING COAL PLANTS**
14 **EVEN THOUGH RELATIVELY CHEAP HYDROPOWER IS AVAILABLE OR USING**
15 **EXCESSIVE COAL FROM ITS MINES WHEN LESS EXPENSIVE MARKET COAL**
16 **IS AVAILABLE. PLEASE RESPOND TO MR. GIMBLE'S CONCERNS.**

17 **A**This could be a concern if my proposal were inflexible and required automatic
18 disallowances, but it does not. Also, the correct actions in the examples given by Mr.
19 Gimble would be relatively easy to defend. For these reasons, I do not believe that
20 Mr. Gimble's examples reflect valid concerns. They certainly would not be reasons to
21 reject the proposed performance standards.

1 **Response to RMP Witness Gregory Duvall**

2 **Q AT PAGE 19 OF HIS REBUTTAL TESTIMONY, MR. DUVALL QUESTIONS**
3 **WHETHER AUDITING AN ECAM FOR RMP WOULD BE MORE COMPLEX THAN**
4 **AUDITING A PGA. HOW DO YOU RESPOND?**

5 A Certainly one indication of the complexity is the number of transactions that RMP
6 conducts in a typical year. I have attached RMP's responses to UIEC Data Request
7 Nos. 18.1, 18.2 and 18.4 as Exhibit ____ (UIEC-7), Exhibit ____ (UIEC-8) and
8 Exhibit ____ (UIEC-9), respectively. In response to UIEC Data Request Nos. 18.1
9 and 18.2, RMP indicates that through September 23, 2010, it had engaged in nearly
10 25,000 electrical financial and physical purchase and sales transactions and nearly
11 700 gas physical and financial transactions. And, in response to UIEC Data Request
12 No. 18.4, RMP indicates that in 2009 it utilized approximately 450,000 different third-
13 party wheeling reservations, and expects to use approximately 350,000 such
14 reservations in calendar year 2010. It has further characterized the number of
15 transactions in each category as "typical" of the recent past. Obviously, auditing all of
16 these transactions would be a monumental task.

17 **Q AT PAGES 19 AND 20 OF HIS REBUTTAL TESTIMONY, MR. DUVALL**
18 **SUGGESTS THAT BEING ABLE TO FOCUS STRICTLY ON THE ECAM IN A**
19 **SEPARATE PROCEEDING WOULD ENHANCE THE AUDITING AND PRUDENCE**
20 **REVIEWS COMPARED TO A GENERAL RATE CASE. DO YOU HAVE ANY**
21 **COMMENTS ON THIS SUGGESTION?**

22 A Whether or not that could be true is subject to debate, but I think the more relevant
23 question is who stands to be harmed if bad decisions are made. Under the current
24 regulatory paradigm, without an ECAM, RMP bears the risk of an adverse outcome in

1 between rate cases. With the ECAM, it becomes the customer, subject to a possible
2 refund if improper activities (or lack thereof) are detected, after an audit.

3 My proposed performance standards on the low operating cost resources
4 provide focus on their operation, put RMP on notice as to the expectation that it will
5 maintain or improve performance with respect to these resources, and provide an
6 added measure of protection for customers.

7 **Summary of Position**

8 **Q PLEASE SUMMARIZE YOUR CONCLUSIONS AND RECOMMENDATIONS WITH**
9 **RESPECT TO THE PROPOSED ECAM.**

10 A They may be summarized as follows:

- 11 1. The incentive to be efficient and control costs is reduced when a utility is
12 allowed to pass-through all, or substantially all, of its incurred costs to
13 customers.
- 14 2. RMP has not satisfactorily explained how the adoption of an ECAM would not
15 change behavioral incentives to the detriment of customers.
- 16 3. RMP has not included any mechanisms in its proposed ECAM that are
17 designed to maintain or improve its productivity and efficiency.
- 18 4. An ECAM should not be adopted until after the Commission has reviewed and
19 issued guidelines with respect to hedging for electricity and natural gas, and has
20 reviewed and issued guidelines with respect to the use of front office
21 transactions.
- 22 5. RMP's tariff sheet which it proposes for the ECAM mechanism is completely
23 devoid of any information necessary to understand how it would be
24 implemented and applied.
- 25 6. Although RMP represents that its proposed ECAM is seasonal, it actually is not.
26 The reconciliation mechanism for ECAM that RMP has proposed is blind to
27 deviations in costs on a seasonal basis and also completely ignores the varying
28 responsibility of customer classes for consumption in individual months.
- 29 7. RMP's ECAM reconciliation proposal is not cost-reflective, and would not send
30 proper price signals to customers. If an ECAM is adopted, cost deviation should
31 be tracked by rate schedule and contract, and allocated on a monthly basis,

- 1 with deviations accumulated into the periods of summer, winter and spring/fall,
2 and reconciled in the subsequent corresponding calendar time period.
- 3 8. The proposed per kWh tracking of changes in the level of NPC is inconsistent
4 with how many of the elements of NPC are allocated among customer classes.
5 In addition, consideration should be given to whether capacity charges or
6 revenues should be tracked at all through an ECAM.
- 7 9. If an ECAM is adopted, it should include certain minimum performance
8 requirements for RMP's lowest cost resources to protect customers from a
9 deterioration of performance.
- 10 10. The low cost resources, which should be subject to a performance standard,
11 include RMP's coal fleet, generation from wind resources and output from
12 RMP's owned or controlled coal mines.
- 13 11. The performance standard could be implemented by requiring RMP's
14 performance in each area not to be less than its historic performance with
15 respect to these key parameters. My recommendation is to establish the
16 benchmark at a five-year average using the five calendar years prior to the
17 adoption of an ECAM.
- 18 12. Anytime that an ECAM reconciliation is filed, RMP would be required to
19 establish that it prudently operated, maintained, and managed its resources,
20 and to the extent it experienced a shortfall below the performance standards, it
21 acquired appropriate substitute resources on a least cost basis.
- 22 13. If an ECAM is adopted, it should not be implemented until the conclusion of
23 RMP's next general rate case. This will permit a clear definition of what is
24 included in ECAM, and will ensure that there is no double-counting.
- 25 14. If an ECAM is adopted, there should be a requirement to file rate cases at least
26 every three years.
- 27 15. If an ECAM is adopted, it should be for a specified period of time, for example
28 three years, with a sunset provision and a requirement to re-justify its continued
29 existence in its then current or modified form.
- 30 16. True-up filings should not be made on December 15 if an ECAM is approved,
31 but rather should occur after the beginning of the calendar year. This avoids the
32 busy holiday season and also accommodates a seasonal reconciliation
33 approach. In addition, the ECAM audit should be conducted by an experienced,
34 independent, third party chosen by the Commission and funded by RMP's
35 stockholders.
- 36 17. The load growth adjustments proposed by the parties appear to have the
37 potential to compensate RMP for such things as economic downturns, weather
38 conditions when heating degree days and/or cooling degree days are less than
39 normal, and even for revenues lost as a result of DSM programs. None of these
40 factors should play into any ECAM adjustment factor.

1 18. RECs are created as a result of investment in renewable energy projects that
2 are supported by customer rates. Customers are entitled to the full benefit of
3 the REC values. It would be appropriate to establish a tracking mechanism for
4 RECs, regardless of whether an ECAM mechanism is adopted.

5 19. Changes in the level of revenues from the sale of transmission service should
6 be tracked and deferred outside of an ECAM mechanism in order to prevent the
7 benefits from being lost to customers.

8 **Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

9 **A** Yes, it does.

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