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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 10-035-124
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PREFILED REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

[TEST PERIOD]

The UAE Intervention Group (UAE) hereby submits the Prefiled Rebuttal Testimony of Kevin C. Higgins on test period issues.

DATED this 17th day of March, 2011.

/s/

Gary A. Dodge,
Attorney for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 17th day of March, 2011, on the following:

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BEFORE
THE PUBLIC SERVICE COMMISSION OF UTAH

Rebuttal Testimony of Kevin C. Higgins

on behalf of

UAE

Docket No. 10-035-124

[Test Period]

March 17, 2011

1

2

REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

3

4 **Introduction**

5 **Q. Please state your name and business address.**

6 A. My name is Kevin C. Higgins. My business address is 215 South State
7 Street, Suite 200, Salt Lake City, Utah, 84111.

8 **Q. Are you the same Kevin C. Higgins who previously filed direct testimony in**
9 **this proceeding on behalf of UAE?**

10 A. Yes, I am.

11 **Q. What is the purpose of your rebuttal testimony?**

12 A. My rebuttal testimony responds to the direct testimony of RMP witness
13 David L. Taylor and Utah Division of Public Utilities (“DPU” or “Division”)
14 witnesses Joni S. Zenger, Matthew Croft, and Douglas D. Wheelwright regarding
15 the most appropriate test period to be used in this general rate proceeding.

16 **Q. Please summarize the conclusions of your rebuttal testimony.**

17 A. After reviewing the direct testimony of the other parties to this proceeding,
18 I continue to recommend that the best test period to be used in this general rate
19 proceeding is Calendar Year 2011, consisting of the period January 1, 2011
20 through December 31, 2011. In my opinion, Calendar Year 2011 best reflects the
21 conditions Rocky Mountain Power (“RMP”) will encounter during the period the
22 rates will be in effect.

23 Strong support for this test period is also provided by Maurice Brubaker
24 on behalf of Utah Industrial Energy Consumers and Daniel E. Gimble on behalf
25 of the Office of Consumer Services. In particular, Mr. Gimble makes the
26 important observation that adoption of the Calendar Year 2011 test period should
27 use average rate base. I strongly agree. This is consistent with the Commission's
28 decision on this topic in Docket No. 08-035-38.

29 In the alternative, I continue to recommend that the Commission require
30 the use of RMP's alternative test period filed in this proceeding, the year ending
31 June 30, 2011 – also using average rate base.

32

33 **Response to Mr. Taylor**

34 **Q. What aspects of Mr. Taylor's testimony do you address in your rebuttal?**

35 A. I address Mr. Taylor's assertions that using the June 2011 alternative test
36 period would produce absurd results; his argument that a projected test period
37 closer in time than is preferred by RMP would unfairly exclude planned additions
38 to plant in service; and his claim that the Company's preferred test period should
39 be selected because, by extending further into the future, it better aligns with the
40 rate effective period in this case.

41 **Q. On lines 137-143 of his direct testimony, Mr. Taylor asserts that using the**
42 **June 2011 alternative test period would produce absurd results because the**
43 **Populus to Ben Lomond transmission line has already been approved for**

44 **recovery and is included in rates, but would only be partially recovered if the**
45 **June 2011 test period is used. What is your response to this contention?**

46 A. The Company's argument is tantamount to asserting that once plant has
47 been allowed into rates through the MPA statute, then the Commission's hands
48 are tied with respect to using certain legally permissible test periods identified in
49 Section 54-4-4(3) of the Utah Code – even though the Legislature expressly
50 adopted intent language stating there would be no presumption either for or
51 against a historical or a future test period as part of the test-period determination
52 process.¹ The logical corollary of RMP's argument is that once the Company is
53 benefitted through approval of an MPA case, then the Company *must necessarily*
54 *be further advantaged* when filing a subsequent rate case by the automatic
55 elimination of test periods that do not extend as far into the future as the Company
56 desires.

57 Moreover, the Company's argument on this point strikes me as a red
58 herring. As Mr. Taylor notes, the Populus to Ben Lomond transmission line has
59 already been approved for recovery and is included in rates. It seems to me that if
60 the June 2011 test period were used, then it would not be a stretch for RMP to
61 argue that an adjustment is warranted to recognize plant that has already been
62 approved and included in rates. Such a circumstance should be viewed more as
63 one of the unfortunate oddities that accompany single-issue ratemaking rather
64 than as a showstopper that limits the range of test period options available to the

65 Commission and which would effectively hamstring the Commission from
66 performing its duty under Section 54-4-4(3) of the Utah Code.

67 **Q. How do you respond to Mr. Taylor's argument that a projected test period**
68 **closer in time than RMP prefers would exclude from rates planned additions**
69 **to plant in service?**

70 A. It is a truism that, as a utility plans to add plant in the future, at some point
71 there will be plant that is not included in rates absent a new rate case. It is
72 necessary to balance the interests of customers and the Company with respect to
73 how far into the future a test period should reasonably extend.

74 RMP complains that the forecasted test period extending 12½ months that
75 was adopted by the Commission in the 2007 case resulted in a \$40 million
76 revenue requirement shortfall to the Company because plant that was added
77 between January and June 2009 was excluded from the test period.² RMP neglects
78 to point out that it controls the timing of its rate cases and its MPA rate cases, and
79 can ameliorate this concern to a significant extent. Moreover, RMP fails to
80 mention that the plant in question became eligible for 50 percent bonus
81 depreciation as a result of the passage of the American Recovery and
82 Reinvestment Act of 2009 – which was not signed into law until February 17,
83 2009 – some four months after the Commission's decision in that case. That this
84 substantial future tax benefit would be available in 2009 was simply not known in

¹ Quoted on lines 101-105 of my direct testimony. Senate Journal, Tuesday, February 19, 2003, Day 30, page 515, Intent Language to S.B. 61; House Journal, Tuesday, March 4, 2003, Day 44, page 961, Intent Language for S.B. 61.

² Direct testimony of David L. Taylor, lines 86-91. Mr. Taylor repeats this complaint on lines 320-328.

85 2008 (although it perhaps could have been wished for by parties planning 2009
86 investment). In selecting a Calendar Year 2008 test period in the 2007 rate case,
87 the Commission protected customers from being overcharged for plant that was
88 ultimately subject to more favorable tax treatment than was known at the time the
89 case was heard.

90 In contrast, bonus depreciation for 2008 was signed into law on February
91 13, 2008. Although this law was enacted after the filing of the Company's 2007
92 case, the effects of the tax change were nonetheless fully incorporated into the
93 2008 test period used in that case after the implications of the newly-passed tax
94 benefit were pointed out in testimony filed by the Committee of Consumers
95 Services and acknowledged by RMP in its rebuttal filing.³ Far from being an
96 example of the failure of a close-in-time test period, the 2007 case underscores the
97 Commission's wisdom in selecting it. Contrary to Mr. Taylor's claim about the
98 relative ease of predicting the future,⁴ changing the test period by six months does
99 make a difference.

100 **Q. If customers are overcharged for plant costs when bonus depreciation is**
101 **excluded from a future test period because the availability of the tax benefit**
102 **is not known at the time the rate case is determined, has it been RMP's**
103 **practice to make a later filing to correct the cost recovery to reflect the**
104 **passage of the new tax law?**

³ Docket No. 07-035-93. Direct testimony of Donna DeRonne, lines 788-831. Rebuttal testimony of Jonathan Hale, lines 116-163.

⁴ See Mr. Taylor's direct testimony, lines 345-350.

105 A. No. That has not been the Company's practice to date. RMP certainly did
106 not make such a filing for the plant added between January 2010 and June 2010
107 that was included in the test period for the Company's 2009 rate case, and which
108 became eligible for bonus depreciation upon the enactment of the Small Business
109 Jobs Act on September 27, 2010.

110 **Q. On lines 192-210 of his direct testimony, Mr. Taylor argues that the**
111 **Company's preferred test period should be selected because, by extending**
112 **further into the future, it better aligns with the rate effective period in this**
113 **case. What is your response?**

114 A. As I noted above, Legislature's intent language in passing Section 54-4-
115 4(3) of the Utah Code makes it clear there is no presumption either for or against
116 an historical or a future test period. The particular importance of this latter
117 statement is that an argument structured along the lines that "a future test period
118 must be chosen because the rate effective period is in the future – and, by
119 definition, a future period best reflects the future" is not sufficient grounds for
120 determining the appropriate test period in Utah.

121 **Q. Please explain.**

122 A. Rate-effective periods are *always* in the future. Therefore, in determining
123 test period, it is not valid to rely on the tautological assertions that "the future best
124 reflects the future," or "the rate effective period best reflects the rate effective
125 period," as reliance on such arguments equates to a presumption in favor of a
126 future test period. Such a presumption would be inconsistent with the stated intent

127 of the legislature. Moreover, such an argument attempts to deprive the
128 Commission of the right to exercise its discretion to consider all of the relevant
129 factual and policy issues inherent in a test year determination. The legislature
130 clearly did not intend to deprive the Commission of its obligation and right to
131 consider all relevant factors in selecting a test year.

132

133 **Response to DPU**

134 **Q. On lines 46-48 of her direct testimony, DPU witness Joni S. Zenger states**
135 **that the Division “does not object” to using the test period proposed by RMP.**
136 **What is your response to this position?**

137 A. Dr. Zenger bases this “non-objection” on her view that the Division’s
138 auditors and analysts can adequately adjust RMP’s forecasts to account for any
139 variance or adjustments that they find.⁵ However, this position begs the question
140 as to whether the Division would similarly “not object” to a test period based on
141 Calendar Year 2011, which is also a future test period that can be adjusted by
142 DPU’s auditors and analysts. In addition, while Dr. Zenger discusses RMP’s
143 anticipated expenditures for new plant, nowhere in her testimony does she note
144 that RMP can seek rate relief for major capital additions through the MPA statute.

145 Moreover, irrespective of any confidence Dr. Zenger may have with
146 respect to the Division’s forecasting ability, I note that in the 2009 rate case, the
147 Division did not foresee the tremendous run-up in REC values that took place in
148 2009, nor to my knowledge has the ever Division predicted changes in the tax law

149 allowing for bonus depreciation in any rate case. This is not a criticism of the
150 Division's forecasting ability: this type of change is very difficult for any party to
151 predict and defend in a general rate case. Consequently, I don't share Dr.
152 Zenger's optimism about setting rates using a test period that extends nearly one
153 and a half years into the future.

154 **Q. Have you reviewed the direct testimony of Mr. Croft?**

155 A. Yes, I have.

156 **Q. Do you have any comments on his testimony?**

157 A. Yes. Mr. Croft analyzed how RMP's actual plant additions have
158 compared to its forecasted plant additions over several rate case filings dating
159 back to 2007. Mr. Croft concludes that from an adjusted and weighted-average
160 perspective, RMP has over-projected its plant additions in the previous five rate
161 case filings. Further, Mr. Croft concludes that eight of the ten weighted average
162 scenarios he performed yielded an absolute dollar deviation between forecasted
163 and actual plant additions that increased over time.⁶ Mr. Croft surmises that
164 RMP's over-projecting of plant additions resulted in an average Utah revenue
165 requirement effect of about \$4 million. I note that, based on my review of DPU
166 Exhibit 2.1, this equates to about \$81 million in over-stated plant in service
167 system-wide.

⁵ Direct testimony of Joni S. Zenger, lines 192-196.

⁶ Direct testimony of Matthew Croft, lines 32-28.

168 Despite these findings, Mr. Croft concludes that, while \$4 million is
169 material, it does not rise to the level that would require the use of an alternative
170 test period.

171 My fundamental response to Mr. Croft is that his analysis demonstrating
172 that RMP typically over-projects its plant levels generally supports my view that a
173 test period closer in time is preferable to RMP's proposal. But the concerns I
174 have raised in my testimony about using the Company's preferred test period are
175 not based primarily on the ability or inability of parties to forecast RMP's plant
176 levels. There are other, more difficult-to-predict items of serious concern, as I
177 have discussed. Mr. Croft's analysis indicating that RMP tends to over-project its
178 plant levels merely adds to that concern.

179 **Q. Have you reviewed the direct testimony of Mr. Wheelwright?**

180 A. Yes, I have.

181 **Q. Do you have any comments on his testimony?**

182 A. Yes. In his analysis of net power cost, Mr. Wheelwright observes that
183 one of the major differences between projected net power cost for the test period
184 ending June 2012 and the one ending December 2011 is that the projected value
185 of electric swaps decreases dramatically. As shown in DPU Exhibit 3.3, this
186 single entry explains nearly \$76 million of the \$124 million difference in net
187 power costs between the two test periods. In other words, the difference is driven
188 by one of the most speculative items in the net power cost forecast. On the hand,

189 the difference in coal costs – which RMP cites as a major factor in its overall rate
190 increase – is only around \$10 million.

191 Mr. Wheelwright also notes that RMP’s load forecast plays a role in
192 driving net power costs. The load growth entries in Mr. Wheelwright’s DPU
193 Exhibit 3.2 reveal that the projected retail sales in the June 2012 test period are
194 1.8 percent greater than the test period ending December 2011. This growth rate
195 applied to Calendar Year 2011 net power cost in DPU Exhibit 3.2 indicates that
196 load growth alone explains about \$25 million of the change in net power cost
197 between the two test periods (at a constant unit cost). This portion of the net
198 power cost differential does not, of course, represent a revenue shortfall to the
199 Company, but rather is supported by revenues from increased sales.

200 **Q. What do you conclude from your review of Mr. Wheelwright’s testimony?**

201 A. Arguments that it is necessary to extend the test period until June 2012 in
202 order to compensate RMP for net power costs are largely based on projections of
203 changes in electric swap values and not changes in coal costs. In my view, Mr.
204 Wheelwright’s analysis supports the contention that Mr. Brubaker, Mr. Gimble,
205 and I have made that the Commission should view an extended test period with
206 great skepticism and continue to require a projected test period that is relatively
207 close in time.

208 **Q. Does this conclude your rebuttal testimony?**

209 A. Yes, it does.