

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

\_\_\_\_\_)  
**In the Matter of the Application** )  
**of Rocky Mountain Power for** )  
**Approval of Changes to** )  
**Renewable Avoided Cost** )  
**Methodology for Qualifying** )  
**Facilities Projects Larger than** )  
**Three Megawatts** )  
\_\_\_\_\_)

**Docket No. 12-035-100**

Surrebuttal Testimony and Exhibit of

**Maurice Brubaker**

On behalf of

**Kennecott Utah Copper, LLC and  
Tesoro Refining & Marketing Company LLC**

May 30, 2013



Project 9747

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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 HAS PREVIOUSLY FILED**
- 5    **TESTIMONY IN THIS PROCEEDING?**
- 6    A    Yes. I have previously filed direct and rebuttal testimony in this proceeding.
  
- 7    **Q    ARE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE OUTLINED IN**
- 8    **YOUR PRIOR TESTIMONY?**
- 9    A    Yes. This information is included in Appendix A to my direct testimony filed on
- 10    March 29, 2013.

11 Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

12 A I am appearing on behalf of Kennecott Utah Copper LLC (“KUC”) and Tesoro  
13 Refining & Marketing Company LLC (“Tesoro”). KUC and Tesoro purchase  
14 substantial quantities of electricity from Rocky Mountain Power Company (“RMP” or  
15 “Company”) in Utah, own large Qualified Facilities (“QF”), and are vitally interested in  
16 the outcome of this proceeding.

17 Q WHAT SUBJECTS ARE COVERED IN YOUR SURREBUTTAL TESTIMONY?

18 A In my surrebuttal testimony, I briefly address and comment on the position of certain  
19 parties concerning the ownership of renewable energy credits (“RECs”).

20 I also comment briefly on the testimony of RMP and the Division of Public  
21 Utilities (“Division”) concerning process and verification issues concerning avoided  
22 costs applicable to QFs.

23 **Renewable Energy Credits**

24 Q IN REBUTTAL TESTIMONY, DOES RMP WITNESS CLEMENTS CONTINUE TO  
25 ASSERT THAT THE COMMISSION CAN AND SHOULD REQUIRE THE OWNERS  
26 OF QFs TO CONVEY THE RECs ASSOCIATED WITH A FACILITY TO RMP IN  
27 RETURN FOR BEING COMPENSATED AT THE LEVEL OF RMP’S AVOIDED  
28 COST?

29 A Yes. In rebuttal testimony, Mr. Clements continues to assert this position.

30 Q AT THE TOP OF PAGE 3 OF HIS REBUTTAL TESTIMONY, LINES 43 THROUGH  
31 49, HE STATES THAT PURPA DOES NOT DICTATE REC OWNERSHIP AND  
32 THAT FERC HAS INDICATED THAT THE QUESTION OF TREATMENT OF RECs  
33 IS A MATTER FOR INDIVIDUAL STATES TO ADDRESS AND SPECIFY. DO YOU  
34 AGREE WITH MR. CLEMENTS' STATEMENTS IN THIS REGARD?

35 A Yes, I agree that PURPA does not dictate ownership of RECs, and that FERC has left  
36 to the states the determination of how the RECs are to be treated in each state.  
37 However, it is also important to note that, as I explained in direct testimony, the  
38 concept of a REC came long after the 1978 passage of PURPA that defined the  
39 avoided cost requirement for compensation of parties providing electricity to an  
40 electric utility. It is therefore clear that the value of a REC could not have been, and  
41 is not, subsumed in the avoided cost calculation.

42 Q PLEASE ELABORATE.

43 A A REC is a certificate created by the Utah state legislature to recognize the  
44 renewable energy attributes of electricity generated from a qualifying renewable  
45 resource. It identifies the source of the energy but has nothing to do with its physical  
46 characteristics. It is a detachable attribute that can be sold separately from the  
47 generated energy without affecting the delivery of the electricity or its physical  
48 characteristics.

49 A recent report by Platts (attached as Exhibit MEB SR-1) provides a review of  
50 the history of the development of RECs and the current markets for RECs. In the  
51 background section of that report, Platts outlines the genesis of RECs as the solution  
52 to the physical impossibility of tracing the source of a particular electron and

53 identifying whether it was generated by a renewable facility or by some other source.

54 The report notes:

55 “RECs offer a solution to this dilemma. Conceptualized in the 1990s,  
56 RECs separate the environmental attributes of renewable energy from  
57 the actual electricity.”<sup>1</sup>

58 Platts also goes on to explain and describe the development of REC markets  
59 in the United States. In some market areas, REC trading is primarily accomplished in  
60 the over-the-counter markets while in other market areas, an organized market for  
61 trading has developed or is developing, similar to the markets which exist for  
62 wholesale electricity.

63 **Q DO RECs HAVE VALUE?**

64 **A** Yes. RECs have value separate and apart from the physical attributes of the  
65 electricity that is produced. If RECs did not have value, over-the-counter and  
66 organized markets for their trading obviously would not exist. The value depends  
67 upon geographic location of the generation, renewable portfolio standard (“RPS”)  
68 rules in various states, supply and demand and a number of other factors. The value  
69 will vary over time, but there obviously is intrinsic value and a debate over the value  
70 of RECs should not be allowed to detract from the ownership issue.

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<sup>1</sup>“Renewable Energy Certificates,” April 2012, Exhibit MEB SR-1 at page 3.

71 Q AT PAGE 5 OF HIS REBUTTAL TESTIMONY, LINES 85 THROUGH 101,  
72 MR. CLEMENTS COMMENTS CONCERNING THE *COTTONWOOD HYDRO* CASE  
73 IN DOCKET NO. 10-035-15. WHAT DID THIS DECISION FIND WITH RESPECT  
74 TO OWNERSHIP OF RECs?

75 A The Commission's Order in the *Cottonwood Hydro* case stated the following at  
76 page 11:

- 77 "1. The output of a generator of renewable energy contains two  
78 distinct commodities: (1) the power generated by the facility itself,  
79 and (2) the environmental attributes of that power, i.e. RECs.  
80 Those commodities can be severed;
- 81 2. Unless provided for otherwise in a contract, the RECs remain with  
82 the generator of renewable energy, and may be sold and valued  
83 separately from the energy produced or retained by the generator  
84 of the REC . . . ."

85 Q IS THIS CONSISTENT WITH YOUR UNDERSTANDING OF UTAH STATE  
86 REQUIREMENTS?

87 A Yes. As I stated in my direct testimony, counsel has advised me that RECs remain  
88 the property of the QF owner, unless the owner agrees otherwise by contract. The  
89 Commission's *Cottonwood Hydro* decision is consistent with that view. The QF owns  
90 the detachable REC, which has value independent from the energy produced, and  
91 may sell the REC or retain it for whatever purpose the QF determines is appropriate.

92 **Avoided Cost Issues**

93 **Q AT PAGE 18 OF HIS REBUTTAL TESTIMONY, LINES 355 THROUGH 369,**  
94 **DIVISION WITNESS DR. ABDULLE RESPONDS TO POINT NUMBER 10 OF**  
95 **YOUR LIST OF PRACTICES REGARDING THE DETERMINATION OF AVOIDED**  
96 **COSTS AND SUGGESTS THAT THE DIVISION ALREADY VERIFIES AVOIDED**  
97 **COST CALCULATIONS. HE URGES THE COMMISSION NOT TO ACCEPT YOUR**  
98 **PROVISION NUMBER 10. HOW DO YOU RESPOND?**

99 **A** Provision Number 10 would require the Division to verify RMP's avoided cost  
100 calculations if the recipient of the avoided cost data from RMP had been unable to do  
101 so. In this regard, he refers to quarterly filings that RMP makes with the Division  
102 concerning avoided costs, and asserts that the Division already verifies the avoided  
103 costs. I have reviewed those filings and determined that they do not contain the  
104 on-peak and off-peak avoided cost information that typically is used for determining  
105 prices in the annual contracts that KUC and Tesoro have with RMP. So, I disagree  
106 that the Division already verifies the avoided costs in the KUC and Tesoro contracts  
107 when it reports on RMP's quarterly filings.

108 **Q DOES THE DIVISION REVIEW THE AVOIDED COSTS IN THE KUC AND TESORO**  
109 **CONTRACTS AT ANY POINT IN THE PROCESS?**

110 Yes. The Division reviews the KUC and Tesoro contracts when they are filed with the  
111 Commission for approval. In 2012, the Division's review of the filed contracts  
112 identified errors in RMP's calculation of avoided costs in KUC's contracts, which had  
113 to be corrected by amendment. In Provision Number 10, KUC and Tesoro propose to  
114 enlist the Division's aid earlier in the process to minimize the possibility of delay in the  
115 Commission proceedings.

116 Q AT PAGE 20 OF HIS REBUTTAL TESTIMONY, LINES 398 THROUGH 405, RMP  
117 WITNESS DUVALL BELIEVES THAT THIS CASE IS NOT THE APPROPRIATE  
118 PLACE TO CONSIDER CHANGES IN SCHEDULE 38. HOW DO YOU RESPOND?

119 A I believe that the Commission could consider these changes in this docket, but in  
120 acknowledgement of Mr. Duvall's point, I noted on page 7 of my direct testimony  
121 (line 141) that the Commission should address these issues ". . . in this docket or in a  
122 separate docket . . .". Accordingly, if the Commission declines to address these  
123 issues in this case, KUC and Tesoro would urge that they be taken up soon in  
124 another forum.

125 Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

126 A Yes, it does.

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