**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

| In the Matter of the Application of Rocky Mountain Power To Increase Rates by $29.3 million or 1.7 percent through the Energy Balancing Account. | ) ) ) ) ) ) ) ) ) | DOCKET NO. 12-035-67<br>Exhibit OCS 2SR<br><br>Surrebuttal Testimony of<br>Randall J. Falkenberg |
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**SURREBUTTAL TESTIMONY OF**

**RANDALL J. FALKENBERG**

**ON BEHALF OF**

**OFFICE OF CONSUMER SERVICES**

**JANUARY 17, 2013**

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

2 A. Randall J. Falkenberg, PMB 362, 8343 Roswell Road, Sandy Springs, Georgia 30350. I
3 am the same witness who filed direct testimony in this case.

4 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

5 A. I respond to the rebuttal testimony of Rocky Mountain Power ("RMP") witnesses Mr.
6 Brian Dickman and Mr. Dana Ralston. I also present the final OCS recommended
7 adjustments to the EBA balance.

8 **Recommended EBA Adjustments**

9 **Q. HAS THE OFFICE BEEN PERSUADED BY THE COMPANY REBUTTAL TO**
10 **MAKE ANY CHANGES TO YOUR RECOMMENDED ADJUSTMENTS?**

11 A. Yes. Mr. Dickman pointed out that $167 thousand of the $203 thousand (Total Company)
12 in legal fees that I recommended be removed as out of period expenses were for on-going
13 labor negotiations related to a soon-to-expire collective bargaining agreement at the
14 Bridger mine. As this amounts to more than 80% of the total amount of the adjustment
15 within the EBA test period, the Office agrees to eliminate this $61,056 (Utah basis)
16 adjustment. Given the short test period in this case, and the insignificant amount of the
17 adjustment, the Office agrees to remove it entirely, rather than argue about the small
18 remaining amount.

19 As for the Centralia Point to Point Contract, Mr. Dickman points out that 122
20 MW of the contract (rather than 40.5 MW I assumed) was redirected in the test period. As
21 a result, I reduce the Centralia Point to Point Adjustment by $104,433 to reflect the
22 additional utilization of the contract. I will address this issue later in more detail.

23 Finally, the Company has agreed to accept the DPU adjustment to include
24 additional out of period expenses amounting to $317,595. The Office also accepts this

25 adjustment. Since the Company included the $317, 595 increase in its total request for
26 recovery of approximately $9.6 million (Dickman Supplemental Direct, Table 1, pg 3),
27 there is no need to include it in my list of adjustments. Table 1SR below sets forth the
28 OCS' final recommended adjustments. The Office does not take any position regarding
29 other adjustments in dispute.

**Table 1SR**
**OCS EBA Adjustments**

| | Adjustment | Total PacifiCorp Before Sharing | Utah |
|---|---|---|---|
| 1 | Centralia PTP | (1,498,940) | (450,551) |
| 2 | DC Intertie Transmission Contract | (1,191,600) | (358,171) |
| 3 | OATT customer wind integration costs | (758,903) | (228,111) |
| 4 | Huntington Unit 2 Contractor Delay (Prudence) | (1,140,789) | (342,898) |
| 5 | Hunting Outages Identified by DPU | (6,076,344) | (1,826,427) |
| | Total | **(10,666,575)** | **(3,206,159)** |

30

31 **<u>Relitigation of Issues From Prior Cases</u>**

32 **Q. MR. DICKMAN SUGGESTS THAT THREE OF YOUR PROPOSED**
33 **ADJUSTMENTS ARE INAPPROPRIATE BECAUSE THEY WERE PREVIOUSLY**
34 **RAISED IN A GENERAL RATE CASES. PLEASE COMMENT.**

35 A. Mr. Dickman's testimony on this point is both wrong and potentially in violation of the
36 Stipulation in Docket No. 10-035-124, which established the NPC baseline in this
37 proceeding. To be very clear about it, I will directly quote his testimony:

38 Three of Mr. Falkenberg's adjustments in this case – his proposals to disallow costs
39 of the DC Intertie, Centralia PTP contract, and non-owned wind integration – are
40 really just repeated attempts to disallow these costs entirely, this time outside of the
41 general rate case process. If the entirety of an issue is again subject to complete
42 review and disallowance in the EBA after it has been addressed in a general rate
43 case, it would render the determination of just and reasonable NPC in a general rate
44 case a meaningless exercise. If an issue has previously been deemed to be
45 reasonably included in base NPC then deviations from the forecast can and ought to

46 be examined in the EBA, and this annual review of actual NPC will identify
47 whether the factors that led to the deviation from base NPC were caused by
48 imprudence on the Company's part. (Dickman Rebuttal page 21-22.)
49

50 Had the Commission rejected these issues in Docket No. 10-035-124, Mr. Dickman would
51 have a valid point, and I would not have raised these matters, absent some significant
52 reason for doing so.[1] However, that case was settled with a substantial NPC reduction
53 ($15 million on Utah basis). The Commission approved the stipulation without making
54 any finding on these issues. As discussed further in Mr. Gimble's surrebuttal testimony,
55 these issues were never addressed by the Commission. The stipulation document itself
56 indicated that there was no precedential value implied by the stipulation, except in limited
57 instances where it spelled out as part of the agreement:

58 72. All negotiations related to this Stipulation are confidential, and no Party shall be
59 bound by any position asserted in negotiations. Except as expressly provided in this
60 Stipulation, in accordance with Utah Admin. Code R746-100-10.F.5, neither the
61 execution of this Stipulation nor the order adopting it shall be deemed to constitute
62 an admission or acknowledgment by any Party of the validity or invalidity of any
63 principle or practice of regulatory accounting or ratemaking; nor shall they be
64 construed to constitute the basis of an estoppel or waiver by any Party; nor shall
65 they be introduced or used as evidence for any other purpose in a future proceeding
66 by any Party except in a proceeding to enforce this Stipulation.
67

68 73. *The Parties agree that no part of this Stipulation or the formulae and*
69 *methodologies used in developing the same or a Commission order approving the*
70 *same shall in any manner be argued or considered as precedential in any future*
71 *case except with regard to issues expressly resolved by this Stipulation. This*
72 *Stipulation does not resolve and does not provide any inferences regarding, and the*
73 *Parties are free to take any position with respect to any issues not specifically*
74 *called out and settled herein.*
75
76

77 The Stipulation in the case where the baseline was established set no precedent, yet Mr.
78 Dickman incorrectly suggests that the issues have already been decided.

[1] For example, in some instances the Commission has decided against accepting certain kinds of adjustments in a case, but indicated it wished to see more evidence concerning the matter in future cases.

79 Were there any precedential value to the stipulation, as Mr. Dickman seems to suggest,
80 arguably it would seem to be that there should be a prorated reduction to the actual NPC to
81 compensate for the $15 million NPC that the Utah baseline was reduced in the settlement.
82 However, I am not suggesting that such an adjustment be made. I urge the Commission to
83 specifically reject Mr. Dickman's argument on this point specifically in its order.

84 **Outages**

85 **Q. MR. DICKMAN ARGUES AGAINST THE HUNTINGTON OUTAGE DELAY**
86 **ADJUSTMENT ON THE BASIS THAT THE LIQUIDATED DAMAGES**
87 **PAYMENT WILL BE CREDITED TO RATEBASE, WHICH RESULTS IN**
88 **"DOUBLE DIPPING" IF THE ADJUSTMENT IS ACCEPTED. DO YOU AGREE?**

89 A. No. The cost of the contractor delay ($1.14 million, Total Company) was far in excess of
90 the estimated liquidated damages payment ($625 thousand, Total Company). Further, it is
91 not clear that the Company has actually received any liquidated damages settlement. In
92 discovery the Company stated it was *requesting* a payment, and the amount Mr. Dickman
93 cites was characterized as *approximate.* Had the Company already received payment, Mr.
94 Dickman would presumably know the exact amount. To avoid the "double dipping"
95 problem, I suggest that the liquidated damages payment need not be deducted from
96 ratebase *if* the adjustment I recommend in this case is adopted by the Commission. Note,
97 however, that my recommended adjustment reflects only the NPC damages resulting from
98 the outage delay. If there were other damages such as higher repair costs resulting from
99 the delay, a further disallowance in a future GRC may still be warranted. This, however,
100 is an issue for a future case.

101 **Q. MR. DICKMAN ARGUES THAT THE ADJUSTMENT IS NOT BALANCED**
102 **BECAUSE THERE IS A PENALTY IN THE CASE OF A DELAY, BUT NO**

103 **BENEFIT IN THE CASE OF EARLY COMPLETION OF AN OUTAGE. PLEASE**
104 **COMMENT.**

105 A. This is a specious argument. The same could be said of the prudence standard – it is one
106 sided. There are disallowances when a utility is imprudent, but no extra reward if a utility
107 is prudent because this is the normal and expected standard of conduct. To use an
108 everyday example – I might get a speeding ticket for driving too fast, but the police don't
109 give safe drivers a reward. Even a typical liquidated damages clause in a contract is one-
110 sided. The Company penalizes the contractor for its failure to perform, but the liquidated
111 damages clause does not provide a benefit for early completion.

112 **Q. DOES MR. RALSTON'S TESTIMONY CONCERNING THE COAL MILL**
113 **EXPLOSION CAUSE YOU TO RECONSIDER THIS ADJUSTMENT?**

114 A. No. Mr. Ralston's testimony indicates that the Company was apparently aware of the
115 problem for a very long time, and that even the NFPA code requirements were changed in
116 2007 to require inerting systems, several years in advance of the event at issue here.[2] He
117 further indicates the protective equipment necessary had already been installed prior to the
118 event, but was not yet placed into service. Given the very high cost (and potential safety
119 issues) posed by such events, the delay in commissioning the inerting system seems quite
120 questionable. The Company clearly recognized the problem long before it addressed it.

121 **<u>Centralia Point to Point and DC Intertie Contracts</u>**

122 **Q. HOW DOES MR. DICKMAN JUSTIFY THE DC INTERTIE CONTRACT?**

123 A. Mr. Dickman makes several arguments. Some were already addressed in my direct
124 testimony. He suggests the contract is needed for reliability purposes, and contends it

[2] While not applicable to Huntington, it clearly demonstrates that the industry and regulators were well aware of this potential problem for quite some time.

125 takes advantage of load diversity. However, there is no reliability basis for the contract
126 because he acknowledges the only transactions that rely upon the contract were spot
127 transactions. Spot transactions are arranged for economy purposes shortly before
128 execution, not for reliability reasons because one can only count on a spot transaction for a
129 very short period of time –typically one hour. For this reason his comparison of the
130 contract to the BPA firm peaking contract for firm power is simply invalid. Firm
131 transmission plus spot energy simply does not equal firm generation capacity.

132 **Q. MR. DICKMAN ARGUES THAT THE COMPANY HAS CHANGED ITS GRID**
133 **MODELING SINCE THE WASHINGTON COMMISSION DISALLOWED THE**
134 **DC INTERTIE CONTRACT. PLEASE COMMENT.**

135 A. The GRID modeling change appears to have been made simply to circumvent a
136 disallowance because it has almost no impact on actual NPC, and is irrelevant to the EBA
137 true up. No matter how the contract is modeled in GRID, in actual operation it is seldom
138 used and provides only limited benefit from spot purchases. The contract is simply not
139 used and useful because its cost is excessive in relation to the benefits it provides.

140 **Q. MR. DICKMAN ARGUES THE CONTRACT HAS BEEN INCLUDED IN RATES**
141 **FOR MANY YEARS, SUGGESTING THAT A DISALLOWANCE IS NOT**
142 **WARRANTED. PLEASE COMMENT.**

143 A. Precedent is not established because regulators fail to detect a problem. The issue was not
144 identified for many years, and was only developed after extensive discovery in prior cases.
145 The Company did not volunteer information regarding the contract and its lack of use until
146 pressed for very specific data. Mr. Dickman acknowledges the issue was raised in the last
147 two GRC's which were both settled cases. Once again, Mr. Dickman seems to be

148 suggesting that a settled case establishes precedent. By signing the stipulations in those
149 GRC proceedings, the Company has already agreed that is not the case.

150 **Q. MR. DICKMAN ARGUES THAT THE PRUDENCE OF THE CONTRACT**
151 **SHOULD BE JUDGED ON WHAT WAS KNOWN WHEN IT WAS EXECUTED.**
152 **PLEASE COMMENT.**

153 A. As I pointed out in my direct testimony, the Company has not and cannot provide any
154 documentation supporting the basis for its agreement to a perpetual contract to serve a
155 limited term contract. The Company cannot establish prudence by mere assertion, which is
156 what Mr. Dickman is trying to do.

157 **Q. WHAT SUPPORT DOES MR. DICKMAN PROVIDE FOR CONTINUED**
158 **RECOVERY OF THE CENTRALIA POINT TO POINT CONTRACT COSTS?**

159 A. He argues that the contract was executed for five years because it would allow the
160 Company to "lock it up" for that time period, reducing the chance that other parties might
161 compete for the same transmission capacity. This sounds much more like a speculative
162 decision on the part of the Company particularly since the Centralia Buyback contract was
163 scheduled to end before the five-year period. Mr. Dickman's argument amounts to a
164 rationalization, rather than demonstration of prudence. Mr. Dickman acknowledges that
165 the contract was previously disputed and that there is no finding of prudence applicable to
166 the contract.

167 Mr. Dickman further argues that 74% of the contract capacity was resold or
168 redirected during test period. However, I already gave credit in my proposed adjustment
169 for the revenue produced by the contract when it was resold. Consequently, the 350 MW
170 he refers to as being resold, was sold at a loss. Given the lack of evidence demonstrating
171 the prudence of the contract, the contract losses should be assigned to the Company.

172 **OATT Wind Revenue**

173 **Q. HOW DOES MR. DICKMAN JUSTIFY THE INCLUSION OF THE OATT WIND**
174 **INTEGRATION COSTS IN THE EBA TEST PERIOD?**

175 A. Mr. Dickman argues that the settlement in the 2010 GRC (Docket No. 10-035-124)
176 allowed for the flow back of incremental transmission wheeling revenue obtained from the
177 then pending FERC rate case to retail customers. The FERC rate case included various
178 types of costs, but not the costs at issue here. Mr. Dickman's argument is irrelevant
179 because the Company never requested recovery of the variable (NPC related) component
180 of wind integration costs from FERC customers. Instead they only requested recovery of
181 fixed costs for wind integration services which are not even an issue in the EBA. Further,
182 the stipulation in that case made no finding regarding future litigation of the OATT wind
183 issue. While the stipulation did address the FERC rate increase, it established no nexus
184 between that issue and the OATT wind revenue issue. Mr. Dickman's testimony is highly
185 misleading.

186 Mr. Dickman goes on to claim, in apparent violation of the stipulation in Docket
187 No. 10-035-124 that "The cost of integrating the non-owned wind resources remained in
188 the test period NPC in each case." (Rebuttal, Page 20.) There is no basis in fact for this
189 claim because the Stipulation clearly does not identify any specific NPC adjustments that
190 were accepted or rejected. However, as noted above, there was an overall $15 million
191 NPC adjustment in the stipulation, which represented a compromise intended to address all
192 adjustments. I fail to see how Mr. Dickman can make this claim when the stipulation
193 clearly never addresses this issue specifically.

194

195

196 **Filing Requirements**

197 **Q. MR. DICKMAN GENERALLY AGREES WITH YOUR SUGGESTION TO**
198 **INCORPORATE THE WYOMING ECAM FILING REQUIREMENTS INTO**
199 **FUTURE EBA CASES. ARE YOU IN AGREEMENT WITH HIS PROPOSAL?**

200 **A.** Yes. Mr. Dickman proposes to include any non-overlapping requirements from the
201 Wyoming ECAM filing requirement into the EBA requirements. He proposes to exclude
202 Wyoming filing requirements related to REC and $SO_2$ emission allowance sales. His
203 proposal is reasonable and the Office requests that the Commission order the Company to
204 supply this information with its next EBA filing.

205 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

206 A. Yes.