

Docket No. 13-035-184
DPU Exhibit 6.0 DIR-REV REQ
David T. Thomson
May 1, 2014

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. 13-035-184 DPU Exhibit 6.0 DIR-REV REQ (CONFIDENTIAL)
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DIRECT TESTIMONY

OF

**DAVID T. THOMSON
STATE OF UTAH
DIVISION OF PUBLIC UTILITIES**

May 1, 2014

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1 **Q. Please state your name and business address for the record.**

2 A. David T. Thomson. My business address is Heber M. Wells Building 4th Floor,
3 160 East 300 South, Salt Lake City, Utah 84114-6751.

4 **Q. For which party will you be offering testimony in this case?**

5 A. I will be offering testimony on behalf of the Utah Division of Public Utilities
6 (“Division”).

7 **Q. Please describe your position and duties with the Division of Public Utilities?**

8 A. I am a Technical Consultant. Among other things, I serve as an in-house
9 consultant on issues concerning the terms, conditions and prices of utility service;
10 industry and utility trends and issues; and regulatory form, compliance and
11 practice relating to public utilities. I examine public utility financial data for
12 determination of rates; review applications for rate increases; conduct research;
13 examine, analyze, organize, document and establish regulatory positions on a
14 variety of regulatory matters; review operations reports and ensure compliance
15 with laws and regulations, etc.; testify in hearings before the Utah Public Service
16 Commission (“Commission”); assist in analysis of testimony and case
17 preparation; and I have participated in settlement conferences.

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

19 A. The purpose of my testimony is to put forth adjustments to various account
20 balances provided by Rocky Mountain Power (the “Company”) in its filing which
21 were used to determine its proposed overall revenue increase request of \$76.3
22 million, as set forth in the testimony of Steven R. McDougal (Exhibit SRM-3).

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23 **Q. What areas of the filing were you assigned to review as part of your**
24 **examination and what other work did you do relating to the Company’s**
25 **filing?**

26 A. I was assigned to directly review or to assist in the review of changes in other
27 revenues; employee compensation, salaries and wages; pension costs and
28 accruals; the addition of prepaid pension costs to rate base in this case; incentives;
29 changes in insurance costs or insurance programs; airplane expenses; corporate
30 overhead allocations; regulated and non-regulated affiliated transactions and
31 allocations; and rate base assets other than electric plant in service. I also
32 reviewed the following accounts: Salaries (FERC Account 920); Outside Services
33 expense (FERC Account 923); Rent expense (FERC Account 931). In addition I
34 was the Division’s lead reviewer for the Company’s adjustments numbers 4.2;
35 4.7, and 8.14 and was a secondary reviewer of the Company’s adjustments 7.2;
36 7.8, and 7.9. I reviewed the responses to data requests of other interveners in this
37 case and noted if the response impacted the revenue requirement in this rate case.
38 I was assigned to manage the Division’s audit team.

39
40 I was involved with reviewing external auditor reports in conjunction with my
41 areas of assignment. I reviewed Company accounting records and documentation
42 directly related to the assigned areas of my review. I reviewed general rate case
43 testimony, filings and stipulations for other Company regulated jurisdictions
44 concerning matters of adjustment and settlement in those filings that would relate

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45 to the Utah filing. I submitted data requests in conjunction with my review and
46 analysis.

47

48 In managing other audit team members, I assisted, directed, and suggested areas
49 where possible adjustments or corrections may be warranted and served as a
50 resource for answering questions and a sounding board for their analysis results
51 and proposed adjustments.

52 **Q. How will you present your adjustments?**

53 A. I have three adjustments and I will discuss them in the order of my attached
54 exhibits, DPU Exhibits 6.1 DIR-REV REQ to 6.3 DIR-REV REQ. These
55 adjustments reduce collection expense in Customer Receipts & Collections
56 (FERC Account 903), legal expense in Other Expenses of Other Power
57 Generation (FERC Account 557), legal expenses in Outside Services (FERC
58 Account 923), and O&M expenses in various administrative and general accounts.

59 **Q. Will you explain your first adjustment as set forth in DPU Exhibit 6.1 DIR-
60 REV REQ?**

61 A. On August 2, 2013, the Commission pursuant to Docket No. 13-035-T08 issued
62 an order approving the Company's proposed changes to Electric Service
63 Regulation No.3. Under the proposed change, customers were now responsible
64 for reasonable court costs, and attorney fees and/or collection agency fees
65 incurred in the collection of unpaid debt following the due date of the customers'
66 closing bill.

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68 In the order the Commission stated, “We agree with the Company’s general
69 notion supporting its proposed changes to Electric Service Regulation No. 3;
70 namely, that it is prudent to hold defaulting customers accountable for their own
71 debts rather than rate payers generally.”¹ The proposed tariff was approved
72 August 2, 2013. Thus, from August 2, 2013 going forward for unpaid accounts
73 assigned to collection agencies, responsible customers will pay collection fees
74 directly to the collection agencies.

75

76 Prior to this tariff change, collection costs were included in FERC Account 903
77 and were part of operating costs in base periods that were escalated to future test
78 period costs in past general rate cases. However, due to the tariff change these
79 costs should not be in the future test period since they are now paid by cost
80 causation customers and not rate payers generally.

81

82 In response to OCS (Office of Consumer Services) Data Request 4.12, the
83 Company provided information showing that collection costs were in the rate
84 case’s base period and that those cost had been escalated and included in the test
85 year. As explained above, these collection costs should not be in this rate case’s

¹ Commission’s Order Approving Proposed Tariff, Docket No. 13-035-T08, first paragraph under the heading Discussion, Findings, and Order, page 3 of the Order.

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86 test year beyond the effective date of the above tariff change. An adjustment to
87 remove these costs is required.

88
89 In its response to OCS Data Request 4.12, the Company provided the Total
90 Company and Utah allocated costs included in the test year. Those amounts were
91 \$1,051,425 and \$449,965 respectively. The Division has used these amounts in
92 its adjustment DPU Exhibit 6.1 DIR-REV REQ to remove the cost from the future
93 test period. The adjustment reduces the Utah revenue requirement by \$449,965.

94

95 **Q. What is your second adjustment as set forth in DPU Exhibit 6.2 DIR-REV**
96 **REQ?**

97 A. In May 2012, a Salt Lake City jury returned a verdict in the case of *USA Power,*
98 *LLC, et al. v. PacifiCorp. et al.*, in the Third District Court, Salt Lake County,
99 Utah, in favor of Plaintiffs USA Power, LLC, USA Power Partners, LLC, and
100 Spring Canyon, LLC (USA Power), and against PacifiCorp, the law firm of
101 Holme Roberts & Owen, and Salt Lake City attorney Jody Williams.

102

103 Plaintiffs were awarded \$18 million in damages against PacifiCorp for its
104 misappropriation of USA Power's trade secrets under the Utah Uniform Trade
105 Secret Act and its breach of a written confidentiality agreement. In addition,
106 Plaintiffs were awarded \$113 million in damages against PacifiCorp for its

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107 unjust enrichment from the theft of USA Power’s trade secrets.² The jury also
108 found that PacifiCorp’s misappropriation of USA Power’s trade secrets was
109 willful and malicious.³
110
111 In May 2013, a final judgment was entered against PacifiCorp in the amount of
112 \$115 million, which included the \$113 million of aggregate damages previously
113 awarded and amounts awarded for the Plaintiff’s attorneys’ fees. The final
114 judgment also ordered that post-judgment interest accrue beginning as of the date
115 of the initial judgment.
116
117 As of December 31, 2013, PacifiCorp had accrued \$117 million for the final
118 judgment and post-judgment interest. Almost all of the above accrual was
119 charged to operation and maintenance in the audited financial statements of the
120 Company for the year ended December 31, 2012 as reported in the Company’s
121 SEC 10K filing for 2013 page 31 – *Operation and Maintenance* explanation
122 under the *Year Ended December 31, 2013 Compared to Year Ended December*
123 *31, 2012* heading. It appears that the only amount for the above accrual of \$117
124 million not recorded in 2012 would be the recording of post-judgment interest
125 for 2013 and the award for the Plaintiff’s attorneys’ fees as explained above.

² The above amounts come from the Company’s 2013 SEC 10K filing page 91 – footnote (13) Commitment and Contingencies; *legal matters*; *USA Power*.

³ See “Jury levels \$134 million fines against PacifiCorp for misappropriation of trade secrets.” By Wendy Leonard, Deseret News, Published: Tuesday, May 22, 2012 @ 9:18pm MDT. An appeal has been filed.

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126

127 In response to DPU Data Request 21.3, the Company stated the following, “-The
128 USA Power judgment has been recorded below-the-line with a nonutility
129 allocation and so is not anywhere in the filing.” However in the Company’s
130 response, it refers to OCS Data Request 3.24 which indicates that the litigation
131 costs are in the rate case base period and had been escalated in the future test
132 period. OCS Data Request 3.24 showed the USA Power Litigation cost
133 included in the base period, the FERC accounts they are recorded in, and the
134 escalated amount included in the future test period for the rate case.

135

136 The Company’s response to OCS Data Request 3.24 shows that the USA Power
137 Litigation cost for the test period were recorded in FERC Account 557 with the
138 Total Company amount of \$ [REDACTED] and the Utah amount of \$ [REDACTED]

139

140 As stated above, the jury awarded damages to USA Power for breach of contract
141 and misappropriation of a trade secret and for actual damages for unjust
142 enrichment. They also found that the misappropriation of USA Power’s trade
143 secrets was willful and malicious. Litigation costs having to do with such
144 Company actions, as determined by a jury verdict, should not be paid by rate
145 payers. These litigation costs should be paid by stockholders. My adjustment
146 removed the costs for this litigation from the future test year. Legal costs for this
147 matter should follow the treatment of the judgment and be recorded below the

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148 line as a nonutility cost and should not be part of legal costs for the computation
149 of revenue requirement in this rate case.

150

151 I have used the above amounts as provided by the Company in the Division's
152 adjustment DPU Exhibit 6.2 DIR-REV REQ (confidential) to remove the cost
153 from the future test period. The adjustment reduces the Utah revenue
154 requirement by \$ [REDACTED].

155

156 **Q. Will you please describe your third adjustment as set forth in Exhibit DPU**
157 **6.3 DIR-REV REQ?**

158 A. Yes. I will start with the following quotation relating to what is called in the
159 accounting records of the Company the Wood Hollow wildfire. The Wood
160 Hollow Fire ignited June 23, 2012 near Fountain Green in Sanpete County, Utah.

161 More than 100 property owners sued Utah's largest utility for
162 negligence Tuesday after a summer wildfire burned more than
163 70 square miles and destroyed more than 50 homes.

164

165 The group of cabin owners, landowners and business interests
166 filed the lawsuit against Rocky Mountain Power after authorities
167 determined the blaze – which left one man dead – was caused by
168 arcing between two sets of power transmission lines built too closely
169 together.

170

171 The utility initially blamed a thief for stripping a protective copper
172 ground wire from one of its transmission poles. But a state fire
173 investigator later determined the ground wire wasn't designed to
174 absorb the powerful arc and wouldn't have stopped the surge from
175 igniting dry grass.

176

177 Rocky Mountain Power said Tuesday it is offering cash settlements

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178 to landowners. In a statement offered to The Associated Press, the
179 utility was careful to avoid admitting fault but said it was pursuing
180 out-of-court settlements with dozens of families.

181
182 The utility says it has already paid some settlements. Rocky Mountain
183 Power President Richard Walje made the offer at a July 31 meeting
184 in Fairview with hundreds of fire victims.⁴

185

186 The Division believes that the costs associated with the Wood Hollow wildfire are
187 extraordinary and unforeseen costs. The cost associated with the fire were not from
188 normal day to day operations but arose from an event that was extraordinary and
189 unforeseen. The total cost of this extraordinary and unforeseen event should be
190 normalized so that abnormal legal costs in the base year that are escalated in the
191 future test year are not reflected in the test year revenue requirement.

192

193 The Division in DPU Data Request 21.3 asked the Company, “Also, are the
194 certain fire and other damages that were expensed per the 10K for 2012 in the rate
195 case base period costs, expenses, or rate base?” The Company’s response was
196 that “These were charged to FERC Account 925. They were adjusted out of base
197 period costs; they are not in the future test period for the rate case. Please refer to
198 Confidential Attachment DPU 21.3 for a summary of these costs showing their
199 removal from the test period.”

200

⁴ “Property Owners sue Rocky Mountain Power over wildfire.” By Paul Foy, Associated Press. September 11th, 2012 @ 4:25pm.

201 From the Company's response it is not clear why the costs were adjusted out of
202 the base period. However, the Attachment DPU 21.3 does reference GRC
203 adjustment 4.7. It appears to the Division that GRC adjustment 4.7 is a
204 normalization adjustment. It, in part and essence, normalizes the large Wood
205 Hollow fire to a three year average of cash paid out for damages and injuries.
206 One cannot tell from the adjustment detail, but possibly the Wood Hollow
207 damages were covered by insurance because the 4.7 adjustment states that cash is
208 not paid out until insurance is paid. Nevertheless, the adjustment is so large that
209 one could state that for the base period of this GRC the Wood Hollow Fire was
210 adjusted out of the test period most likely due to the much smaller three year cash
211 payout average of \$4,432,191 (see computation exhibit adjustment 4.7.1 to
212 adjustment 4.7) as compared to the large damage accruals shown in Attachment
213 DPU 21.3. The three major accruals shown for damages in Attachment DPU 21.3
214 was \$[REDACTED]. The regulatory adjustment amount decreasing damages in
215 GRC adjustment 4.7 is \$48,066,211 Total Company and \$20,413,861 Utah
216 Allocated.

217
218 The Division believes as stated above that the legal costs and any other directly
219 related costs of the Wood Hollow Fire should be normalized in this general rate
220 case. The Division proposes to normalize the legal costs and related other costs
221 on a future test year escalated amount by amortizing such costs over a five year

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222 period. The Division has chosen a five year period over a three year period due to
223 the infrequent nature of the event that caused the fire.

224

225 DPU Exhibit 6.3 and 6.3.1 DIR-REV REQ (confidential) shows the Division's
226 normalizing adjustment and how it was computed. The future test year amounts
227 shown in the exhibits were provided by the Company in its confidential response
228 to OCS Data Request 3.23. Legal expenses (FERC account 923) due to this
229 adjustment were reduced \$ [REDACTED] Total Company and \$ [REDACTED] Utah allocated.
230 O&M costs (various A&G FERC accounts) were reduced \$ [REDACTED] Total
231 Company and \$ [REDACTED] Utah allocated.

232

233 **Q. Does this conclude your Testimony?**

234 **A. Yes.**

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