

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Voluntary Request of)
Rocky Mountain Power for Approval of)
Resource Decision and Request for) Docket No. 14-035-147
Accounting Order)
)

DIRECT TESTIMONY OF

BELA VASTAG

FOR THE

OFFICE OF CONSUMER SERVICES

MARCH 17, 2015

1 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

2 A. My name is Béla Vastag. I am a Utility Analyst for the Office of Consumer
3 Services (Office). My business address is 160 East 300 South Salt Lake
4 City, Utah 84111.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. First, I introduce the witness who provides testimony on behalf of the Office.
7 Then, I will provide the overall recommendation of the Office regarding
8 Rocky Mountain Power's (Company) request for approval to close the Deer
9 Creek mine and request for a prudency determination on the interrelated
10 financial transactions associated with the mine closure (the "Transaction").

11 **Q. PLEASE IDENTIFY THE WITNESS FOR THE OFFICE AND EXPLAIN
12 THE PURPOSE OF HER TESTIMONY.**

13 A. Donna Ramas is a certified public accountant with the firm Ramas
14 Regulatory Consulting, LLC. Ms. Ramas' testimony provides a summary of
15 the individual components of the Transaction and then provides the Office's
16 specific recommendations on the quantification, accounting and regulatory
17 treatment of those individual components.

18 **Q. PLEASE SUMMARIZE THE OFFICE'S OVERALL RECOMMENDATION
19 CONCERNING THE COMPANY'S REQUEST.**

20 A. First, the Office is unclear whether the Company's entire request falls under
21 UCA 54-17-401 to 403 – Voluntary Request For Resource Decision Review.
22 Further, a significant portion of the costs remain uncertain and adequate
23 evidence has not been presented on which the Commission can base an

24 order that includes a pre-approved level of cost recovery. Therefore, the
25 Office recommends that rather than ruling on the prudence of the entire
26 Transaction at this time, as requested by the Company, the Commission
27 should rule on the parts of the request for which adequate evidence has
28 been presented. Specifically, the Office recommends only the following at
29 this time:

- 30 • Approve the closure of the Deer Creek mine;
- 31 • Approve the Coal Supply Agreements (CSA) with Bowie subject to
32 further review if the take-or-pay provision is implemented;
- 33 • Approve the Asset Purchase and Sale Agreements with Bowie;
- 34 • Find that moving forward with the Transaction is in the public interest
35 and
- 36 • Authorize deferral of the unrecovered Deer Creek mine and other
37 mining related investments, as well as the deferral of other costs
38 associated with the Transaction to regulatory assets, for future
39 prudence review in a general rate case.

40 **Q. PLEASE EXPLAIN WHY THE COMPANY'S REQUEST UNDER UCA 54-**
41 **17 PART 4 MAY NOT BE ENTIRELY APPROPRIATE.**

42 A. The Company halted mining operations at Deer Creek in December 2014.
43 The Company entered into new Coal Supply Agreements (CSAs) with
44 Bowie Resource Partners (Bowie) to fuel the Hunter and Huntington power

45 plants on December 12, 2014.¹ The Asset Purchase and Sale Agreements
46 between the Company and Bowie for the Fossil Rock coal leases, the Trail
47 Mountain mine, the Prep Plant and the Central Warehouse are also all
48 dated December 12, 2014. UCA 54-17-402(1) states: “...before
49 implementing a resource decision, an energy utility may request that the
50 commission approve...” [emphasis added]. The Company has ceased
51 mining and has already entered into CSAs and asset sales agreements with
52 Bowie. The implementation of the resource decision is already in progress
53 and it is unlikely that the Company will stop and reverse course.

54 Given that the resource decision is already being implemented and
55 assuming the Company is allowed to proceed under UCA 54-17-402(1), the
56 Office sees another issue with the Company’s application. This issue is that
57 the majority of the costs of the Transaction are currently not adequately
58 known or knowable. UCA 54-17-402 (7) (a) states that the Commission
59 shall include in its order approving a resource decision findings on the
60 approved costs of the decision. A majority of the costs associated with the
61 Transaction have been presented as estimates. These cost estimates
62 include the UMWA pension withdrawal, final royalties paid to the BLM for
63 unmined coal, costs to remove equipment, seal and reclaim the mine and
64 amounts for the sale or transfer of some of the other mining assets. In each
65 of these categories of costs, final amounts are dependent on the actions of

¹ Per the CSA, the Company is not obligated to accept coal deliveries from Bowie until the Company has received all necessary regulatory approvals for the Transaction.

66 the Company. Pre-approving the estimated level of costs requested by the
67 Company would essentially remove any prudence review of the actions
68 taken by the Company in determining final costs.² The Commission should
69 not be asked to approve these costs until strong evidence has been
70 provided that demonstrates the actual level of costs and that they have
71 been the result of prudent actions by the Company.

72 **Q. DOES THE COMMISSION HAVE A HISTORY OF APPROVING**
73 **RESOURCE DECISIONS BASED ON PROJECTED COSTS?**

74 A. Yes. An example would be the SCR systems for the Bridger power plant in
75 Docket No. 12-035-92 where the Company used RFP bids from vendors for
76 a majority of the projected costs. However, in this Application, the Company
77 has used its own estimates for a majority of the costs; and, these estimates
78 are for maximum amounts, i.e., at the top end of the cost range. In addition,
79 and more importantly, the Company has the ability to negotiate these costs
80 down before actually paying them. The Company's own actions will greatly
81 impact the final level of costs. This sets this Application apart from other
82 resource decisions that have come before the Commission where costs are
83 based on bids from outside parties.

² For example, the level of BLM royalties included in the Company's request appears to be for the maximum royalties that the Company might have to pay. However, the actual royalties paid will depend on the case presented by the Company to the BLM and its subsequent negotiations. According to the Company's response to OCS Date Request 2.23, settlement of the BLM royalties may not occur until 3 years after the mine closure.

84 **Q. DOES THE OFFICE CLAIM THAT THE VOLUNTARY REQUEST FOR**
85 **RESOURCE DECISION STATUTE CANNOT BE USED IN THIS**
86 **INSTANCE?**

87 A. No. However, the Office notes that the statute explicitly allows for the
88 Commission to approve parts of the resource decision and defer approval
89 of the remaining parts to a general rate case.³ Thus, the Office
90 recommends that the Commission not approve the Transaction as an entire
91 package in the manner the Company has requested. My testimony and the
92 testimony of Ms Ramas recommend alternative actions to approving the
93 entire Transaction in this proceeding.

94 **Q. WHAT SPECIFIC REQUEST FOR RELIEF HAS THE COMPANY ASKED**
95 **FOR IN ITS APPLICATION?**

96 A. The specific requests for the Commission to make a determination on are:⁴

- 97 1. *Authorize the Company to defer the costs and apply the accounting*
98 *treatment as described in this Application to continue with or facilitate*
99 *future recovery of all costs associated with the Transaction, UWMA [sic]*
100 *pension withdrawal and settlement of the Retiree Medical Obligation;*
- 101 2. *Determine that the Company's decision to consummate the Transaction*
102 *is prudent and in the public interest; and*
- 103 3. *Approve the Application to close the Deer Creek Mine, sell the Mining*
104 *Assets and enter into Coal Supply Agreements as described in the*
105 *Application on or before May 27, 2015...*
- 106 4. *Grant such other relief as the Commission deems necessary and proper.*
107

108 **Q. WHAT IS THE OFFICE'S RESPONSE TO EACH OF THE ITEMS**
109 **ABOVE?**

³ UCA 54-17-402(4) & (5)

⁴ Page 25 of Rocky Mountain Power's December 15, 2014 Application.

- 110 A. The Office responds to each item as follows:
- 111 1. The Commission should allow the Company to defer the costs
112 associated with closing the Deer Creek mine, with selling the mining
113 assets, with withdrawing from the UMWA pension plan and with settling
114 the UMWA retiree medical obligation into regulatory assets, once costs
115 are known, using the accounting, regulatory and true-up treatment
116 recommended in the testimony of Office witness Ms Donna Ramas.
- 117 2. The Commission should not rule on the prudence of the entire
118 Transaction at this time but wait until a future proceeding when the
119 results of the Company's actions are known and then rule on the
120 prudence of the individual components of the Transaction. The
121 Commission should find that the Company moving forward on the
122 Transaction would be in the public interest. However, the public interest
123 also requires that the Company continue to take future prudent actions
124 to minimize costs for Utah ratepayers. Thus, the Office also
125 recommends that such future actions be subject to prudence review.
- 126 3. The Commission should approve the closure of the mine, the sale of the
127 mining assets to Bowie and the CSAs with Bowie. These approvals will
128 allow the Company to meet its May 31, 2015 deadline to switch its
129 fueling strategy for the Huntington Plant from the Deer Creek mine to
130 the Bowie CSA. Despite recommending approval of the CSAs, the
131 Office is concerned about the impact that environmental regulations

132 might have on the Huntington CSA even though the Company states
133 that there are “broad termination rights”⁵ for the CSA.

134 **Q. PLEASE EXPLAIN THE OFFICE’S CONCERN REGARDING THE**
135 **POTENTIAL IMPACT OF ENVIRONMENTAL REGULATIONS ON THE**
136 **BOWIE COAL SUPPLY AGREEMENT FOR THE HUNTINGTION PLANT**

137 A. The Huntington CSA contains a provision to terminate the agreement in the
138 event that environmental regulations impact the plant’s ability to consume
139 the minimum contracted amount of coal. Company witness Seth Schwartz
140 states: “PacifiCorp has included provisions in the Bowie contract which
141 would protect it against being obligated to continue to purchase coal in the
142 event that new government laws, rules or regulations affected the ability to
143 consume at least [REDACTED] tons per year of coal at the Huntington power
144 plant.”⁶ The Office is concerned that ultimately such a provision may not
145 protect ratepayers from the contract’s take-or-pay provision exposing
146 ratepayers to over \$100 million of costs.

147 **Q. DOES THE VOLUNTARY REQUEST FOR RESOURCE DECISION**
148 **REVIEW STATUTE PROVIDE ANY PROTECTION FOR RATEPAYERS**
149 **IN THIS SITUATION?**

150 A. It appears so. UCA 54-17-403 (2)(a) states: “Subsequent to the
151 commission issuing an order described in Subsection (2)(a)(i) or (ii), the
152 commission may disallow some or all costs incurred in connection with an

⁵ Company’s December 15, 2014 Application, page 12.

⁶ Direct testimony of Seth Schwartz, Redacted Version, lines 646 – 650.

153 approved resource decision if the commission finds that an energy utility's
154 actions in implementing an approved resource decision are not prudent
155 because of new information or changed circumstances that occur after: (i)
156 the commission approves the resource decision under Section 54-17-402;
157 or (ii) the commission issues an order to proceed under Section 54-17-404."

158 If the Huntington CSA environmental regulation provision does not
159 work as the Company claims, or if the Company does not implement the
160 provisions in a timeframe or manner that best protects customers, the
161 Commission can later find that the take-or-pay costs incurred by the
162 Company are imprudent and not allow these costs to be part of the
163 Company's revenue requirement in a future rate case. The Office
164 recommends that the Commission reserve the right to review the prudence
165 of the Company's actions associated with any costs resulting from the take-
166 or-pay provision.

167

168 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

169 A. Yes it does.