

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, Consisting of a General Rate
Increase of Approximately \$161.2 Million per Year, and for
Approval of a New Large Load Surcharge

Docket No 07-035-93

TEST YEAR REBUTTAL TESTIMONY OF

ROGER J BALL

4 FEBRUARY 2008

1 Q Are you the same Roger J Ball who filed Test Year Testimony in this Docket on 25
2 January 2008?

3 A Yes.

4 Q What is the purpose of your rebuttal testimony?

5 A To respond to the direct test year testimony filed on behalf of the UAE Intervention Group
6 (UAE or Energy Users), the Utah Committee of Consumer Services (CCS or Committee),
7 and the Division of Public Utilities (DPU or Division), and to amplify my own direct
8 testimony.

9 Q Have you read the direct testimony filed by UAE witness Higgins, CCS witnesses Murray
10 and DeRonne, and DPU witness Zenger? If so, please recapitulate some of their points.

11 A Yes. Mr Higgins recommends calendar year 2008 as best reflecting the conditions Rocky
12 Mountain Power (RMP, or PacifiCorp, or Company, or utility) is likely to encounter during
13 the rate effective period or, if that is impracticable, in the alternative, 1 July 2007 – 30
14 June 2008, which RMP had labeled the “Mid-Period”. Ms Murray advocated an early
15 determination of the test year by the Commission to optimize the parties’ resource
16 utilization. Ms DeRonne supported that view and recommended that the Commission
17 adopt some measures to safeguards ratepayers if it selects any future test period. Dr
18 Zenger writes that, subject to adjustments following audit:

19 The Division has no objections to the use of the test period recommended by the
20 Company ending June 30, 2009, subject to the conditions explained below.
21 *On the basis of the evidence* in this particular case, we find the Company’s
22 proposed future test period is *the most defensible test period* to be used in
23 this case, and it best reflects the conditions that the Company will
24 encounter when the rates will be in effect.¹

¹ DPU’s *Direct Testimony of Joni S Zenger PhD*, 25 January 2008, in this Docket, 07-035-93, lines 40-44.

25 Q What evidence did Dr Zenger adduce to support her conclusion that a July 2008 – June
26 2009 test year is “the most defensible” period in this case?

27 A Dr Zenger wrote that she had examined the test period sought by the Company against
28 UCA §54-4-4(3) and criteria identified by the Commission in its 20 October 2004 *Order*
29 *Approving Test Period Stipulation* (third section, headed *Discussion, Findings and*
30 *Conclusions*, first paragraph), and concluded that it complies with them. However, I was
31 unable to find comprehensive data or analysis demonstrating that Dr Zenger had
32 compared any other particular test period, much less all the possible test periods, with
33 that sought by the utility to support her recommendation that “on the basis of the
34 *evidence*” a twelve-month test period ending 30 June 2009 “is the *most defensible*”
35 (emphases added).

36 Q What do you mean by “all the possible test periods” in this case?

37 A Rocky Mountain Power’s application offered historic data for one, July 2006 to June 2007,
38 and projected numbers for two more, July 2007 to June 2008 and July 2008 to June
39 2009. There is no statutory reason in UCA §54-4-4(3) why a test year must run either
40 July to June, or January to December. Indeed the use of the “period” rather than “year” in
41 the statute doesn’t preclude the use of something other than 12 months, or mandate that
42 it must commence on the first of a month or end on the last. Within the bounds of time
43 used by the Company alone, there are 24 possible 12-month test periods that start on the
44 first and end on the last of the month. While it was owned by ScottishPower, the utility
45 regularly asked for April to March test periods to conform with its parent’s accounting
46 conventions rooted in British modern tax law that is in turn based upon mediæval practice
47 and the Julian calendar.

48

49 Q Is the Commission limited to considering only test periods mentioned in a utility's
50 application, or for which the utility has offered data sets?

51 A No. UCA §54-4-4(3)(a) requires the Commission to “select a test period that, on the basis
52 of evidence, the commission finds best reflects” conditions the utility will encounter during
53 the rate effective period. It doesn't empower the Commission just to pick one from a
54 limited range of options offered by a utility. It “shall” select the “best”, and it “shall” do so
55 “on the basis of evidence”. The Division is statutorily required to “provide the commission
56 with objective and *comprehensive* information, evidence, and recommendations”
57 (emphasis added). It earlier proposed a later determination of test year after adequate
58 time to study the issue, and Dr Zenger explained that she had done what she could prior
59 to filing her direct testimony. Rocky Mountain Power chose to offer data sets for just 3 of
60 at least 24 possible test periods. Dr Zenger examined just one of them. The information,
61 analysis and recommendations before the Commission are inadequate to meet the
62 statutory requirement that the Commission base its selection on evidence, and without a
63 much more wide-ranging comparison of alternatives it cannot reasonably find that July
64 2008 to June 2009 is the period that best reflects conditions during the rate effective
65 period.

66 Q What evidence did Mr Higgins offer in support of his recommendation that the
67 Commission select calendar 2008?

68 A In addition to the statute and criteria mentioned by Dr Zenger, he referenced a number of
69 concerns about the use of out-of-period adjustments that the Commission recorded in its
70 2004 *Order Approving Test Period Stipulation* (third section, second paragraph). Mr
71 Higgins recommended the selection of calendar 2008 as the test year in this Docket,
72 explaining that, while this was a fully-forecasted test period, it did not reach so far as the
73 utility's into the future beyond the likely date of a Commission order in this Docket. Thus

74 it would lessen the chance of a repetition of the hit that I and similarly-situated ratepayers
75 took from 1 June to 6 September 2007. He noted that no data set had yet been compiled
76 for this fourth option. Mr Higgins cautioned that embedding forecasts of rising inflation in
77 rates would make it more likely, and addressed others of the Commission's criteria that he
78 concluded made his recommended calendar 2008 test period superior to the one the
79 Company sought.

80 Q What do you mean by "the hit ... ratepayers took from 1 June to 6 September 2007?"

81 A On 1 December 2006, the Commission issued its Report and Order in PacifiCorp's last
82 Utah general rate case, approving a black-box settlement between the Company,
83 Committee, Division and numerous other parties increasing the utility's Utah jurisdictional
84 revenues by \$115M with effect from 11 December 2006. It provided for an annualised
85 credit to ratepayers of \$30M until 1 June 2007 when the Company had testified the
86 Lakeside power station was projected to come into operation. That was a good-faith
87 attempt to ensure that ratepayers did not start paying for Lakeside before they received
88 the matching benefits of its output. In the event, however, Lakeside was not brought on-
89 line until 6 September 2007. Consequently, for some 14 of the hottest weeks of the year
90 when residential rates are at their highest, I and similarly-situated ratepayers were paying
91 for a PacifiCorp investment that was neither used nor useful.²

92 Q Do you agree with Mr Higgins' assertions that "there is no presumption either for or
93 against an historical, a mixed, or a future test period" and that future test periods
94 do not necessarily best reflect rate effective periods, which are necessarily in the
95 future?

² *Committee of Consumer Services, v Public Service Commission of Utah*, 595 P.2d 871, Utah 1979.

96 A Yes. The first of those is what the plain language of UCA §54-4-4(3) and the legislative
97 intent statement he quoted says. The Commission, in its 2004 *Order Approving Test*
98 *Period Stipulation*, wrote:

99 For many years our general practice has been to rely on historical test periods
100 without out-of-period adjustments. A major concern with out-of-period
101 adjustments is the possible bias and lack of complete information about offsetting
102 adjustments. Additional concerns discussed in the order in Docket No. 92-049-05
103 include the Company's unequalled access to financial and accounting information
104 and the shifting of risks to ratepayers of the uncertain future as management
105 action may offset the effects of regulatory adjustments. Our concerns with future
106 test periods include the diminished economic examination and accountability,
107 replacement of actual results of operations data with difficult-to-analyze
108 projections, ability of parties to effectively analyze the Company's forecasts,
109 dampening of the efficiency incentive of regulatory lag, playing to the Company's
110 strength from control of critical information and shifting of the risks of the future to
111 ratepayers.

112 I entirely agree with Mr Higgins that, since rate-effective periods have been and are
113 always in the future, the Legislature clearly and certainly did not intend to mandate test
114 periods that were even partially projected. Nor did it limit the Commission's freedom to
115 consider adjustments sought on the basis of plans and forecasts on their individual
116 merits. If it is permissible to adjust historic data for "known and measurable changes" that
117 will likely post-date a test period, it must surely be permissible to adjust projected data for
118 differences that most certainly occurred prior to it.

119 Q Has Rocky Mountain Power proposed in this Application to include in rates costs
120 associated with generation projects that, similar to Lakeside in the previous case, it may
121 bring into production during the forecast test year it seeks in this docket?

122 A Yes, at least eight.³ Experience has demonstrated that a rate credit until a date certain
123 does not protect ratepayers against the costs of project delay. Professionals in the field

³ *Application*, 17 December 2007, in Docket 07-035-93 *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 & Electric Service Regulations, Consisting of a*

124 are familiar with the concept of three project management variables: cost, time and
125 quality. If one has to be reduced or constrained, one or both of the others will inevitably
126 increase. Many people are familiar with Murphy's Law: anything that can go wrong, will;
127 and some with its extension, O'Reilly's Law: Murphy was an optimist. There is a third,
128 MacNulty's Law: all the best laid plans of mice and men are filed away somewhere.
129 Somewhere in a PacifiCorp drawer is filed the plan that Lakeside would come on-line on 1
130 June 2007, but something went wrong. No one can be certain that the generation
131 facilities promised in this Application will be timely brought into service, and the
132 Commission should not expose ratepayers to risks over which they (ratepayers) have no
133 control. RMP, on the other hand, is receiving a risk premium in its Return on Equity. In
134 seeking certainty of recovery before bringing the promised plants on-line, the Company is
135 looking to transfer the risks of that not happening on time to ratepayers. Mr Higgins has
136 asked for a less aggressive future test period; Ms DeRonne has asked that ratepayers be
137 safeguarded if the Commission adopts a future test year; I have proposed that RoE be
138 reduced commensurate with the quantified risk transferred from stockholders to
139 ratepayers. These are reasonable proposals that conform with UCA §54-4-4(3), and both
140 criteria and concerns identified by the Commission in its 2004 *Order Approving Test*
141 *Period Stipulation*.

142 Q Do you wish to respond to Ms Murray's recommendation that the Commission select the
143 test period in this proceeding very early?

144 A I agree that the sooner everyone knows what the test period is to be, the more efficiently
145 we can all focus our efforts. However, it is more important that the selection be right than
146 that it be quick. A test year ending 30 June 2009 may be *good*, in that it more closely

General Rate Increase of Approximately \$161.2 Million per Year, and for approval of a New Large Load Surcharge, Testimony of A Robert Lasich, lines 41-44.

147 matches a rate effective period commencing on 13 August 2008 – if indeed that turns out
148 to be the rate effective period – than either of RMP’s other data sets or calendar 2008.
149 Mr Higgins has argued persuasively that this last is *better*. But the Commission is
150 required to select the *best*, and it cannot know what that is based upon just 3 of at least
151 twenty-four data sets. It will take longer to generate and examine a fuller range of
152 options.

153 Q What did you mean when, on lines 5-7 on page 3 of your direct Testimony, you wrote:
154 “However, it also seems to lie within the Commission’s UCA §54-7-12(3)(c) authority to
155 revise Rocky Mountain Power’s proposed increase to go into effect well after that date”?

156 A UCA §54-7-12(3)(c) provides only that “(i)f the commission fails to enter the commission’s
157 order granting or *revising* a revenue increase within 240 days after the utility’s schedules
158 are filed”. There appears to be nothing in the statute to prevent the Commission revising
159 a proposed revenue increase so that any rate increase would take effect more than 240
160 days after filing. If the Commission needs more time to adequately examine this
161 Application, it could therefore issue an interim order at any point before 13 August 2008,
162 ie within the 240 days, revising the proposed increase for later implementation.

163 Q Do you have any corrections to your direct Testimony, filed on 25 January?

164 A Yes. The sentence that begins on line 8 and ends on line 10 of page 8 should be
165 extended to read:

166 However, regulatory lag affects ratepayers, too: when a utility is over earning,
167 ratepayers must wait for reduced rates while the “administrative process”
168 operates, and there is no limit – no 240 days or any other period – specified to
169 protect them.

170 Further, the sentences on lines 18 through 20 on page 10 should be amended to read:

171 For some reason, regulators seem to have decided that Senate Bill 61 requires the
172 determination whether a utility is over or under earning to be based upon projected
173 rather than actual numbers. UCA 54-4-4 doesn't require that.

174 There is nothing anywhere in that Section, not just sub-section (3)(a) that requires the
175 assessment of over- or under-earning to be based upon forecast, rather than actual,
176 expenses and revenues.

177 Q Does that conclude your Test Year Rebuttal Testimony?

178 A Yes, thank you.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Test Year Rebuttal Testimony of Roger J Ball in Docket 07-035-93 was served upon the following by electronic mail on 4 February 2008:

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