

Mark C. Moench (2284)
Daniel E. Solander (11467)
Attorneys for Rocky Mountain Power
Rocky Mountain Power
201 South Main St., Suite 2300
Salt Lake City, UT. 84111
(801) 220-4459 (Moench)
(801) 220-4014 (Solander)
(801) 220-3299 (Fax)
mark.moench@pacificorp.com
daniel.solander@pacificorp.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>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</p>	<p>Docket No. 07-035-93</p> <p>MOTION OF ROCKY MOUNTAIN POWER TO STRIKE RATE OF RETURN DIRECT AND REBUTTAL TESTIMONY OF ROGER J. BALL</p>
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Administrative Code R746-100-3.H and R746-100-10.F.1 and the Commission’s Scheduling Order issued December 27, 2007, moves the Commission to strike the Rate of Return Direct Testimony of Roger J. Ball dated on March 31, 2008 (“Direct Testimony”) and the Rate of Return Rebuttal Testimony of Roger J Ball dated April 28, 2008 (“Rebuttal Testimony”)¹ (collectively, “Ball ROE Testimony”). The Ball ROE Testimony is not probative or relevant, makes arguments that are contrary to the accepted standards for determining the

¹ The Rebuttal Testimony is incorrectly dated March 31, 2008, but was served on Rocky Mountain Power on April 28, 2008.

Company's required rate of return on equity capital ("ROE"), and is untimely in responding to the Company's cost of capital testimony filed December 17, 2007. Therefore, it should be stricken.

INTRODUCTION

Rocky Mountain Power filed its application for an increase in rates in this matter on December 17, 2007. The application was supported by the testimony of 13 witnesses, including the testimony of Bruce N. Williams and Samuel C. Hadaway on cost of capital issues.² The Scheduling Order in this matter required parties other than Rocky Mountain Power to file testimony on cost of capital issues by March 31, 2008 and parties, including Rocky Mountain Power, to file rebuttal testimony to the March 31 testimony by April 28, 2008. Other than Mr. Ball, all witnesses filed testimony on March 31, 2008, responding to the Company's cost of capital testimony filed December 17, 2007.

Mr. Ball's Direct Testimony did not mention the testimony of Mr. Williams or Dr. Hadaway or even purport to analyze or estimate the Company's cost of capital. Rather, it made the incredible claim that "PacifiCorp doesn't need and cannot justify ...the 10.75% RoE [sic] in its original application, and it doesn't expect to get [it] from these proceedings." (Direct Testimony, lines 123-125) Mr. Ball further argued that in determining the Company's ROE, the Commission should consider the history of settlements in past rate cases, House Bill 320 in the 2000 General Session of the Utah Legislature, Senate Bill 61 in the 2003 General Session, the use of future test periods resulting from that legislation and policies and unrelated ventures of prior owners of the Company. Mr. Ball concluded that the Commission should adjust its ROE

² The Company also filed the policy testimony A. Richard Walje, urging the Commission to set an ROE sufficient to allow the Company to meet its huge capital needs on reasonable terms.

award downward to eliminate any revenue requirement increase resulting from the use of a future test period. (*Id.*, lines 161-162)

Mr. Ball's Rebuttal Testimony responds for the first time to the direct testimony on cost of capital issues filed on December 17, 2007. However, it still does not address issues probative or relevant to determination of the cost of capital. Rather it argues that "the normal requirements for a market-traded entity to raise shareholder capital hardly apply to PacifiCorp" because its ultimate parent is Berkshire-Hathaway (Rebuttal Testimony, lines 38-39) and that the Commission should not confine itself to considering ROEs required by comparable companies (*Id.*, lines 55-71) and suggests that "[i]f Berkshire-Hathaway doesn't see an opportunity to further invest in the Company at returns acceptable to it, it may choose to sell." (*Id.*, lines 42-43)

This motion will demonstrate that the Ball ROE Testimony should be stricken because it is not probative or relevant, is based on premises contrary to established standards for determining cost of capital and is untimely.

ARGUMENT

I. THE BALL ROE TESTIMONY DOES NOT PROVIDE PROBATIVE OR RELEVANT EVIDENCE.

The Commission is not bound by the technical rules of evidence, it may not base a finding solely on incompetent evidence and it may exclude non-probative and irrelevant evidence. Utah Admin. Code R746-100-10.F.1. The testimony does not provide probative or relevant evidence on ROE.

A. The Testimony Is Not Probative.

Rule 702 of the Utah Rules of Evidence provides that technical or other specialized knowledge evidence may be admitted if it will assist the Commission because it is reliable and "the principles or methods on which such knowledge is based ... are generally accepted by the

relevant expert community.” The central point of the rule is that expert opinion evidence must be provided by an expert qualified by knowledge, skill, experience, training or education, must be reliable and must be based on facts and methods of analysis generally accepted by relevant experts.³

The United States Supreme Court has established that determination of the cost of capital to be used in setting just and reasonable utility rates is based on “the return to the equity owner ... commensurate with returns on investments in other enterprises having corresponding risks.”⁴ This Commission has consistently followed this principle, and the Utah Supreme Court has recognized it as the law in Utah.⁵

Pursuant to this principle, expert witnesses providing probative evidence on cost of capital, including ROE, utilize financial models to estimate the return expected by investors in utility companies with risks corresponding to those of the company whose rates are being set. As the Commission has repeatedly acknowledged, however, determination of ROE is not simply a mathematical exercise, but requires the application of expert judgment on the inputs, use and

³ See *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Franklin v. Stevenson*, 1999 UT 61, ¶¶ 13-18, 987 P.2d 22; *Patey v. Lainhart*, 1999 UT 31, ¶¶ 15-19, 977 P.2d 1193.

⁴ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“*Hope*”). See also *Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679, 692 (1923) (“*Bluefield*”).

⁵ *Utah Power & Light v. Public Service Comm’n*, 152 P.2d 542 (Utah 1944) (reliance on *Hope*); *Mountain Fuel Supply Co. v. Public Service Comm’n*, 861 P.2d 414, 427 (Utah 1993) (citing *Bluefield* and *Hope*); *Re U S West Communications, Inc.*, 1997 WL 875832, *438 (Utah PSC 1997) (“*U S West*”) (referring to *Bluefield* and *Hope*: “As we have stated many times, these cases counsel us to reach a decision which gives investors the opportunity to earn returns sufficient to attract capital and that are comparable to returns investors require to assume the same degree of risk in other investments they might make. Investors’ required return, the opportunity cost of capital, is the utility’s cost of capital.”)

weighting of the results of the models and on other factors.⁶ Expert witnesses offer informed opinions on the ROE required by investors.

The Ball ROE Testimony does not even purport to estimate Rocky Mountain Power's required ROE based on information and methods typically relied upon by cost of capital experts. The only aspect of the testimony that addresses ROE is Mr. Ball's recommendation that the Company's ROE be reduced by \$27,583,763, the amount of the rate increase sought based on a 2008, rather than an historical, test period. Mr. Ball offers no analysis of ROE based on facts and methods reasonably relied upon by experts in the field to support his recommendation.

B. The Issues Discussed in the Testimony Are Irrelevant to ROE.

As discussed above, the Direct Testimony discusses Mr. Ball's view of the history of settlements in past rate cases, legislative history authorizing use of future test periods, the use of future test periods and policies and unrelated ventures of prior owners of Rocky Mountain Power. His Rebuttal Testimony comments on the acquisition of the Company by MidAmerican Energy Holdings Company ("MEHC") and the ownership of MEHC by Berkshire-Hathaway. Mr. Ball concludes with a recommendation that the Commission should adjust the Company's authorized ROE downward by \$27,583,763 to eliminate the portion of the revenue requirement attributable to use of a future test period. The Testimony provides no expert analysis of cost of capital in support of this recommendation.

None of the Ball ROE Testimony is relevant to a determination of ROE, so it should be stricken.

⁶ See, e.g. *U S West*, 1997 WL 875832, *437 ("We conclude that cost-of-capital estimation is a larger task than mere mathematical application of financial models" "We look to be sure witnesses have done the best they can to employ *sound, educated judgments*) (emphasis added).

II. THE PREMISES OF THE BALL ROE TESTIMONY ARE CONTRARY TO ESTABLISHED PRINCIPLES.

As noted above, the United States Supreme Court has established that determination of the cost of capital to be used in setting just and reasonable utility rates is based on returns on investment being realized in other business enterprises with comparable risks. Contrary to this clear and well-established principle, Mr. Ball suggests that these principles do not apply in this case because the Company is ultimately owned by Berkshire-Hathaway and that if Berkshire-Hathaway does not like the returns it can earn, it may choose to sell the Company. He also suggests that the Commission should not confine itself to considering earnings of comparable companies. These arguments ignore the well-established principles of *Hope* and *Bluefield* and, therefore, should be stricken.

III. MR. BALL'S RESPONSE TO THE COMPANY'S COST OF CAPITAL TESTIMONY IS UNTIMELY.

In addition to Mr. Ball, the Division of Public Utilities ("Division") and the Committee of Consumer Services filed direct testimony on cost of capital on March 31, 2008. Each of these other parties responded in their direct testimony to the direct testimony on cost of capital filed by Rocky Mountain Power on December 17, 2007. As noted above, Mr. Ball's Direct Testimony did not even mention the Company's direct testimony on cost of capital, let alone attempt to rebut it. Company witnesses responded to the cost of capital testimony of the other parties on April 28, 2008. However, the Company could not respond to Mr. Ball's testimony responsive to the Company's direct case because Mr. Ball had not yet responded to the Company's direct testimony. Mr. Ball's response is untimely and should be stricken.

CONCLUSION

Based on the foregoing, the Commission should strike the Ball ROE Testimony.

DATED: February 21, 2018.

Respectfully submitted,

Mark C. Moench
Daniel E. Solander
Rocky Mountain Power

Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **MOTION OF ROCKY MOUNTAIN POWER TO STRIKE RATE OF RETURN DIRECT AND REBUTTAL TESTIMONY OF ROGER J. BALL** was served upon the following persons by email on February 21, 2018:

F. Robert Reeder William J. Evans Vicki M. Baldwin Parsons Behle &, Latimer 201 South Main Street, Suite 1800 Salt Lake City, Utah 84111 bobreeder@parsonsbehle.com bevans@parsonsbehle.com vbaldwin@parsonsbehle.com	Cheryl Murray Dan Gimble Michele Beck Committee of Consumer Services 160 East 300 South, 2 nd Floor Salt Lake City, UT 84111 cmurray@utah.gov dgimble@utah.gov mbeck@utah.gov
Paul Proctor Utah Committee of Consumer Services Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 pproctor@utah.gov	Gary A. Dodge Hatch James & Dodge 10 West Broadway, Suite 400 Salt Lake City, UT 84101 gdodge@hjdllaw.com
Dennis Miller William Powell Philip Powlick Division of Public Utilities Heber M. Wells Building 160 East 300 South, 4 th Floor Salt Lake City, UT 84111 dennismiller@utah.gov wpowell@utah.gov philippowlick@utah.gov	Michael Ginsberg Patricia Schmid Assistant Attorney General Utah Division of Public Utilities Heber M. Wells Bldg., Fifth Floor 160 East 300 South Salt Lake City, UT 84111 mginsberg@utah.gov pschmid@utah.gov
Rick Anderson Kevin Higgins Neal Townsend Energy Strategies, Inc. 215 South State Street, Suite 200 Salt Lake City, UT 84111 randerson@energystrat.com	Michael L. Kurtz, Esq. Kurt J. Boehm, Esq. Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 Ph: 513-421-2255 Fax: 513-421-2764 mkurtz@bkllawfirm.com

khiggins@energystrat.com ntownsend@energystrat.com	kboehm@bkllawfirm.com
Arthur F. Sandack Attorney for Petitioner IBEW Local 57 8 East Broadway, Ste 510 Salt Lake City, Utah 84111 Telephone: (801) 532-7858 asandack@msn.com	Roger J Ball 1375 Vintry Lane Salt Lake City, Utah 84121 (801) 277-1375 ball.roger@gmail.com
Roger Swenson US Magnesium LLC 238 North 2200 West Salt Lake City, Utah 84116 Roger.swenson@prodigy.net	Stephen F. Mecham Callister Nebeker & McCullough 10 East South Temple, Suite 900 Salt Lake City, UT 84133 sfmecham@cnmlaw.com
Betsy Wolf Utah Ratepayers Alliance Salt Lake Community Action Program 764 South 200 West Salt Lake City, Utah 84101 bwolf@slcap.org	Craig Cox Executive Director Interwest Energy Alliance P.O. Box 272 Conifer, Colorado 80433 cox@interwest.org
Stephen R. Randle Stephen R. Randle P.C. Attorney for Utah Farm Bureau Federation 664 N Liston Cir. Kaysville, UT 84037 s.randle@yahoo.com	Steven S. Michel Western Resource Advocates 2025 Senda de Andres Santa Fe, NM 87501 smichel@westernresources.org
Mike Mendelsohn Western Resource Advocates 2260 Baseline Rd, Suite 200 Boulder, CO 80302 mmendelsohn@westernresources.org	Sarah Wright Executive Director Utah Clean Energy 1014 2nd Avenue Salt Lake City, UT 84103 sarah@utahcleanenergy.org
Gerald H. Kinghorn Jeremy R. Cook Parsons Kinghorn Harris, P.C. 111 East Broadway, 11th Floor Salt Lake City, UT 84111	Peter J. Mattheis Eric J. Lacey Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson Street, N.W. 800 West Tower Washington, D.C. 20007 pjm@bbrslaw.com elacey@bbrslaw.com

<p>Ronald J. Day, CPA Central Valley Water Reclamation Facility 800 West Central Valley Road Salt Lake City, UT 84119 dayr@cvwrf.org</p>	<p>Dale F. Gardiner Van Cott, Bagley, Cornwall & McCarthy 36 South State Street, Suite 1900 Salt Lake City, Utah 84111 E-mail: dgardiner@vancott.com</p>
<p>Holly Rachel Smith, Esq. Russell W. Ray, PLLC 6212-A Old Franconia Road Alexandria, VA 22310 holly@raysmithlaw.com</p>	<p>Janee Briesemeister AARP 98 San Jacinto Blvd. Ste. 750 Austin, TX 78701 E-mail: jbriesemeister@aarp.org</p>
<p>Mr. Ryan L. Kelly Kelly & Bramwell, PC Attorneys at Law 11576 South State Street Bldg. 203 Draper, UT 84020 ryan@kellybramwell.com</p>	<p>Steve W. Chriss Wal-Mart Stores, Inc. 2001 SE 10th Street Bentonville, AR 72716-0550 stephen.chriss@wal-mart.com</p>

an employee of Rocky Mountain Power