

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request of Rocky)	
Mountain Power for Significant Energy)	
Resource Decision and for Certificate of)	<u>Docket No. 08-035-95</u>
Public Convenience and Necessity)	
)	<u>DPU Exhibit No. 3.0</u>
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Pre-Filed Direct Testimony of

Thomas C. Brill, Ph.D.

For the Division of Public Utilities

Department of Commerce

State of Utah

February 5, 2009

1 **Direct Testimony of Thomas C. Brill, Ph.D.**

2 **I. INTRODUCTION**

3 **Q. Please state your name and occupation.**

4 A. My name is Dr. Thomas C. Brill. I am employed by the Division of Public Utilities of
5 the Utah Department of Commerce as a Technical Consultant.

6
7 **Q. What is your business address?**

8 A. Heber M. Wells Office Building, 160 East 300 South, Salt Lake City, Utah, 84114.
9

10 **Q. On whose behalf are you testifying?**

11 A. The Division of Public Utilities (Division).
12

13 **Q. Do you have any exhibits that you are filing that accompany your testimony?**

14 A. Yes. My resume is attached as Exhibit 3.1
15

16 **Q. Please outline the projects you have worked on since coming to the Division.**

17 A. I joined the Division in June 2005. I managed the Division's team that investigated
18 PacifiCorp's (Company) general rate case applications in 2006 and 2007 (Docket Nos.
19 06-035-21 and 07-035-93). I am managing the rate case team for the Division in the
20 Company's 2008 general rate case, which is Docket 08-035-38. Since 2007, I have
21 coordinated the Division's participation in the Company's Requests for Proposals (RFP)
22 in Docket Nos. 05-035-47, 07-035-94, and 08-035-95.

23

24 **Q. Have you previously testified before the Commission?**

25 A. Yes. I provided the Policy Recommendations Testimony in Docket No. 07-035-93 on
26 April 7, 2008 in the Company's 2007 general rate case. I also provided the Stipulation
27 Settlement Testimony in Docket No. 06-035-21 on August 17, 2006, which was the
28 Company's 2006 general rate case.

29

30 **Q. What is the purpose of your testimony that you are now filing?**

31 A. My testimony outlines the 2012 RFP history leading up this docket and attempts to
32 document how we have arrived at a situation in which the Company is seeking an
33 expedited application before the Commission. My testimony is intended to support the
34 summary and recommendations of Division witness Mr. Douglas Wheelwright.

35

36 **Q. What are the Division's recommendations for this docket?**

37 A. The Division states clearly, for the record, that it is reserving the right to fully audit all
38 Lake Side 2 costs when these costs are finally booked and recommend adjustments as
39 necessary. Specific recommendations regarding the Division's position on the Lake Side
40 2 expedited application are found in the testimony of Mr. Douglas Wheelwright. In
41 particular, since the Division believes the Company is largely responsible for the delays
42 in the 2012 RFP process and the current need for expedited treatment, as will be
43 explained in Mr. Douglas Wheelwright's testimony, the Division does not recommend

44 approval of the option payment or any potential penalty, since approval of the option
45 payment or any potential penalty places all of the project risk on ratepayers.

46
47 The Division strongly recommends that the Company better manage the RFP process, in
48 particular a more realistic RFP schedule, and ensure timely completion of schedule
49 components. This recommendation is based on the observation of many schedule delays
50 and the apparent lack of decision making capability on the part of RFP project
51 management. Lack of attention to RFP schedule deadlines, whether intentional or
52 unintentional, has now resulted in a process that is significantly behind schedule.

53
54 Furthermore, this expedited application openly states that timely completion of an
55 important permit is at risk and assumes that other regulatory agencies waive their review
56 time. An interpretation is that the Company appears to be using the pre-approval process
57 to place all (or at least shift significant) project risk on ratepayers. The Division finds
58 this unacceptable and recommends that the Commission instruct the Company to manage
59 its future applications, to the extent practicable, so as to avoid the necessity of expedited
60 treatment. Should the Company again file a request for expedited treatment of a resource
61 acquisition in the future, the Division recommends that the Commission carefully
62 consider the reasoning behind such a request. If the request is due to controllable
63 schedule delays, the Division believes the motion should be denied.

64

65

66 **II. BACKGROUND AND OVERVIEW**

67

68 **Q. Will you briefly review the background and factual framework surrounding this**
69 **docket?**

70 A. The Company's 2004 Integrated Resource Plan (IRP) and Action Plan were filed with the
71 Commission in January 2005. At that time, the Company identified a resource deficit by
72 summer 2009. In the IRP's Action Plan, Action Item 7 identified the need for the
73 Company to acquire flexible, supply-side resources up to 525 megawatts (MW) for
74 delivery in or into the Company's Eastern Control area by summer 2009. In response,
75 the Company filed the 2009 RFP on June 27, 2005. The Company proposed the
76 following schedule for the 2009 RFP:

77

Event	Anticipated Date
2009 RFP Issued	September 2005
RFP bid Conference	October 2005
Intent to bid forum	October 2005
Responses Due	December 1, 2005
Evaluation complete	January 2006
Bidder negotiation	February-June 2006
PacifiCorp decision	July 2006
Utah Commission Approval Proceeding -180 days	August 2006-January 2007

78

79 The Company revised its resource assumptions in the second half of 2005 and filed a
80 motion to suspend the procedural schedule on October 20, 2005. After the MidAmerican
81 Energy Holding Company (MEHC) transaction closed on March 20, 2006, the Company
82 filed a motion on April 19, 2006 to extend the procedural schedule. In 2006, the 2009

83 RFP became the 2012 RFP, which sought up to 1,700 MW of generation resources for
84 the 2012-2014 period.

85
86 The Company filed drafts of the 2012 RFP in July 2006, in October 2006, and again in
87 February 2007. Bid proposals were submitted on June 29, 2007. The conditional final
88 short-list had the concurrence of the Utah IE and the Oregon IEs on December 27, 2007.
89 The conditional final short-list was then narrowed in mid-February 2008 to the Lake Side
90 2 proposal. The current docket is for the resource approval of the 2012 RFP process that
91 resulted in the Lake Side 2 selection. On December 3, 2008, the Company filed an
92 application for Approval of Significant Energy Resource Decision Resulting from 2012
93 Request for Proposals.

94

95 **Q. Has the Company requested an expedited review of this docket?**

96 A. Yes, it has.

97

98 **III. DIVISION CONCERNS WITH THE ACTUAL SCHEDULE**

99 **Q. What was the schedule approved for the 2012 RFP?**

100 A. The approved schedule for the 2012 RFP, which was issued on April 5, 2007, is
101 presented in the accompanying table:

RFP Activity	Anticipated Date
	(Issued date was April 5, 2007.)
RFP Bid Conference	Issued + 20 days
RFQ Form Due	Issued + 30 days
Response Due	Issued + 75 days
Evaluation Complete	Issued + 120 days

OPUC Final Short List Acknowledgement	Issued + 200 days
Bidder Negotiation	Issued + 240 days
PacifiCorp Decision	Issued + 270 days
Utah PSC Approval (180 days)	Issued + 450 days
Avoided Cost Filing	Issued + 500 days

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109 **Q. How did the anticipated schedule compare with the actual schedule?**

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Among other things, the table suggests that “Bidder Negotiation” would require approximately 120 days, or about 4 months, after the completion of the Evaluation. In addition, there was an expectation that a “PacifiCorp Decision” would follow in another month. Finally, the original schedule properly allowed for a 180-day Commission review.

A. The following table compares the anticipated schedule with the actual schedule. Several items are readily apparent from review of the table. The Bid Conference, the RFQ Form Due Date, and the Bid Response Due Date all were reasonably on schedule. Had the remainder of the 2012 RFP process performed close to the the anticipated schedule, we would not find ourselves in the situation we are in today necessitating an expedited review of the Company’s application.

RFP Activity	Anticipated Date	Approximate Date	Actual Date
	(Issued date was 4/5/07.)		
RFP Bid Conference	Issued + 20 days	April 25, 2007	April 25, 2007
RFQ Form Due	Issued + 30 days	May 7, 2007	May 25, 2007
Response Due	Issued + 75 days	June 19, 2007	June 29, 2007
Evaluation Complete	Issued + 120 days	August 5, 2007	December 27, 2007
OPUC Final Short List Acknowledgement	Issued + 200 days	October 25, 2007	February-March 2009
Bidder Negotiation	Issued + 240 days	December 5, 2007	March-September 2008

PacifiCorp Decision	Issued + 270 days	January 5, 2008	December 3, 2008
Utah PSC Approval (180 days)	Issued + 450 days	July 5, 2008	Not Determined
Avoided Cost Filing	Issued + 500 days	August 25, 2008	Not Determined

117

118 Unusual delays included an evaluation process and bidder negotiation that both were
119 more than twice as long as originally planned. The credit issue was unresolved through
120 much of 2007.

121

122 The Actual Date listed for “PacifiCorp Decision” in this table is December 3, 2008,
123 which is the date the expedited application was filed with the Commission. However, the
124 Division understands that “Bidder Negotiations” were mostly completed by September
125 2008. The Division is concerned by the fact that the results of the 2012 RFP process had
126 narrowed to Lake Side 2 before March, and Bidder Negotiations began in March 2008,
127 but the Company did not file the application until December 3, 2008. The Division has
128 concluded that valuable time within the control of the Company was lost in the second
129 half of 2007 and throughout 2008.

130

131 **Q. Are you suggesting that had the Company maintained something close to the**
132 **originally anticipated schedule there would have been no need for this expedited**
133 **application?**

134 A. Yes.

135

136 **Q. Are you suggesting that the Company was fully to blame for the schedule delays?**

137 A. No. The Company should be held accountable only for what it had under its control.
138 Bidder-caused delays should not be attributed to the Company. Nevertheless, it was the
139 Company's RFP, and valuable time, which was under the Company's control, was lost
140 during the August-December 2007 time period. One result of the significant delay during
141 the August-December 2007 period was that the Company filed another application that
142 resulted in the 2008 RFP. During this time the 2012 RFP seemed to be effectively on
143 hold. The 2008 RFP application also requested expedited treatment by regulators. That
144 process moved rapidly to a May 1, 2008 hearing; however, the 2008 RFP was not
145 actually issued by the Company until October 2, 2008.

146

147 **Q. Are you suggesting that some delays are acceptable but other delays are not**
148 **acceptable?**

149 A. Yes. Brief delays may be acceptable and in the normal course of business. The Request
150 For Qualifications (RFQ), for example, was delayed a few weeks from May 7 to May 25,
151 in order to allow bidders additional time to submit more complete RFQ packages.
152 Consequently, the bid delivery date was backed up 10 days from June 19 to June 29,
153 2007. Those were modest, reasonable delays. In contrast, big delays caused by lack of
154 decision making capability should not be considered acceptable. Nevertheless, the RFQ
155 due date of May 25, 2007 did not mean credit issues were resolved. Credit issues
156 continued to be discussed throughout 2007, and that is an example of an unreasonable
157 delay resulting from a lack of decision making.

158

159 **Q. Did the Division communicate to the Company its concern over the schedule delays?**

160 A. Yes. In August and September 2007, the Division became concerned with a number of
161 issues. These concerns were communicated to the Company so as to protect the overall
162 integrity of the RFP process. The Division communicated its concern over the schedule
163 delays to the Company on several occasions in August and September 2007. The Utah
164 IE also expressed this same concern to the Company. There was little, if any, response
165 from the Company. The Division communicated its concern again to the Company in late
166 September 2007. On October 2, 2007, the Company filed an application to amend the
167 2012 RFP. The proposal to amend the 2012 RFP, after considerable opposition by
168 regulators, was withdrawn on November 30, 2007. Again, the Company lost valuable
169 time during the August-December 2007 period in arriving at a decision on how to handle
170 2012 RFP issues such as credit, incomplete bids, and schedule delays.

171
172 **Q. During the Bidder Negotiation, was RFP project management aware of the schedule**
173 **delays and the potential difficulty of the 2012 RFP selection delivering power by**
174 **July 2012?**

175 A. Yes. These issues were identified by the contractor early in the negotiation process. In a
176 letter from Summit Power to PacifiCorp dated March 2, 2008 they stated,

177 All Contractors are extremely busy and if we are to stay on schedule for a May 2012
178 completion, we must proceed as soon as possible with the detailed costing of the
179 project as well as negotiations of the terms and conditions.¹

180
181 Later in the same March 2, 2008 letter they indicated the following:

¹ Summit Power letter to Stacey Kusters, PacifiCorp, March 2, 2008.

182 Lastly, we are growing concerned regarding the availability of the rotating equipment
183 to support the schedule requirements for this project. Siemens has sold or has
184 commitments for much of their 2010 gas turbine production. As you know, these are
185 the critical path components for the project and if we are to stay on track for a May
186 2012 completion, we must engage in our discussion immediately.²
187

188 In response to a Division data request for a detailed timeline of bidder negotiation
189 throughout 2008, the Company replied that no detailed timeline throughout 2008 was
190 available.

191

192 **Q. Mr. Douglas Wheelwright’s testimony for the Division questions the ability of the**
193 **Company to meet certain key project deadlines as specified in its contract with**
194 **Siemens. Would these deadlines be in doubt had PacifiCorp followed its original**
195 **schedule for project selection and negotiation?**

196 A. Probably no. Siemens should have been provided with sufficient notice to proceed had
197 the Company kept on schedule. However, there is another source of delay in this project
198 that has endangered this deadline.

199

200 **Q. What is that?**

201 A. The delay in obtaining the air permit in a timely manner.

202

203 **Q. Please Explain.**

² Id.

204 A. The Company in early October 2008 provided the Division with information that the
205 bidder was having trouble obtaining an air permit from the Utah Division of Air Quality
206 and that the issuance of the air permit might easily be delayed until Fall 2009.

207

208 **Q. Given that information, do you think it was reasonable for PacifiCorp to negotiate**
209 **and contract those contemplated late fees if this permit was not in place by June 1,**
210 **2009?**

211 A. No. This is addressed more fully in Mr. Wheelright's testimony.

212

213 **IV. CONCLUSION**

214 **Q. Please state your conclusion.**

215 A. The Division is concerned with the Company-caused delays in the 2012 RFP schedule
216 leading up to the December 3, 2008 expedited application for Lake Side 2. The 2012
217 RFP process began in a 2005 docket and was originally intended to deliver supply-side
218 resources in 2009. The Division accepts that the Company reassessed its resource
219 requirements for 2009, re-evaluated resource needs in light of the MEHC transaction, and
220 identified summer 2012 as the new critical date for power delivery. However, the
221 Division recommends that the Company manage the future RFP process better and, in
222 particular, avoid delays in the RFP process. Furthermore, the Division believes that the
223 Company managed the 2012 RFP in such a way as to result in an expedited approval
224 process for the Lake Side 2 selection. Delays have caused the Company to push back the
225 original forecast completion date and have resulted in the need for an expedited approval

226 process. The Division maintains that the expedited approval application by the Company
227 has now put Utah regulators in an “all or nothing” situation – either approve Lake Side 2
228 or face the consequences of uncertain market purchases in 2012.

229
230 The Division states clearly, for the record, that it is reserving the right to fully audit all
231 Lake Side 2 costs when these costs are finally booked. In particular, the Division does
232 not recommend approval of the option payment or any potential penalty. Approval of the
233 option payment or any potential penalty places all of the project risk on ratepayers.

234
235 Beginning in late summer 2007, the Division communicated its concern with the delays
236 and other aspects of the RFP process to the Company. A number of these issues have
237 also been documented in the reports by the Utah IE.

238
239 The Division strongly recommends that the Company better manage the RFP process, in
240 particular a more realistic RFP schedule, and ensure timely completion of schedule
241 components. Lack of attention to RFP schedule deadlines, whether intentional or
242 unintentional, has now resulted in a process that is significantly behind schedule. In
243 addition, the Division is concerned that the Company appears to be using an expedited
244 pre-approval process to place all project risk on ratepayers. In conclusion, the Division
245 finds this unacceptable

246

247 The Division recommends that the Commission consider the reasons for the next
248 expedited PacifiCorp application. For example, if that request by the Company is due to
249 schedule delays under Company control, the Division recommends that the next
250 expedited Company application be denied.

251

252 **Q. Does this complete your testimony?**

253 **A. Yes it does.**

254