

Gary A. Dodge, #0897  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, UT 84101  
Telephone: 801-363-6363  
Facsimile: 801-363-6666  
Email: gdodge@hjdllaw.com

Attorneys for the Utah Association of Energy  
Users

---

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism	<b>Docket No. 09-035-15</b>
--	-----------------------------

---

**PREFILED SURREBUTTAL TESTIMONY OF KEVIN C. HIGGINS**

**REGARDING FINAL EBA REPORT AND TESTIMONY**

---

The Utah Association of Energy Users (“UAE”) hereby submits the Prefiled Surrebuttal Testimony of Kevin C. Higgins in this docket regarding the Division of Public Utilities’ Final EBA Report, testimony relating to the same, and EBA modification testimony.

DATED this 15<sup>h</sup> day of December 2016.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_  
Gary A. Dodge  
Attorneys for UAE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 15<sup>th</sup> day of December 2016 on the following:

Public Service Commission:           psc@utah.gov

Rocky Mountain Power:

R. Jeff Richards	robert.richards@pacificorp.com
Yvonne R. Hogle	yvonne.hogle@pacificorp.com
Dan Solander	daniel.solander@pacificorp.com
Bob Lively	bob.lively@pacificorp.com
Tarie Hansen	tarie.hansen@pacificorp.com

Division of Public Utilities:

Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Charles Peterson	chpeterson@utah.gov
Erika Tedder	etedder@utah.gov

Office of Consumer Services:

Rex Olsen	rolsen@utah.gov
Robert Moore	rmoore@utah.gov
Michele Beck	mbeck@utah.gov
Bela Vastag	bvastag@utah.gov

UIEC:

F. Robert Reeder	BobReeder@pblutah.com
William J. Evans	BEvans@pblutah.com
Vicki M. Baldwin	VBaldwin@pblutah.com

/s/ \_\_\_\_\_

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism )  
)  
) Docket No. 09-035-15  
)  
)

**Surrebuttal Testimony of Kevin C. Higgins**

**On Behalf of the**

**Utah Association of Energy Users**

**Regarding EBA Final Report and Testimony**

**December 15, 2016**

1 **I. INTRODUCTION AND SUMMARY**

2 **Q. Please state your name and business address.**

3 A. My name is Kevin C. Higgins. My business address is 215 South State  
4 Street, Suite 200, Salt Lake City, Utah, 84111.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies  
7 is a private consulting firm specializing in economic and policy analysis applicable  
8 to energy production, transportation, and consumption.

9 **Q. Are you the same Kevin C. Higgins who previously filed testimony in this**  
10 **proceeding on behalf of the Utah Association of Energy Users (“UAE”)?**

11 A. Yes, I am.

12 **Q. What is the purpose of your Surrebuttal Testimony?**

13 A. My Surrebuttal Testimony responds to several topics discussed in the  
14 rebuttal testimonies of Charles E. Peterson on behalf of the Division of Public  
15 Utilities (“DPU”), Michael G. Wilding on behalf of Rocky Mountain Power  
16 (“RMP”), and Philip Hayet on behalf of the Office of Consumer Services  
17 (“OCS”). Specifically, my Surrebuttal Testimony responds to proposals by Mr.  
18 Peterson and Mr. Wilding regarding the so-called “mismatch issue;” Mr.  
19 Peterson’s proposal to mandate that RMP file a general rate case at least every  
20 three years; expansion of EBA-eligible costs and/or adoption of tracker  
21 mechanisms as discussed by Mr. Hayet and Mr. Wilding; and the use of interim

22 rates as part of the EBA mechanism as discussed by Mr. Peterson (in his Direct  
23 Testimony) and Mr. Hayet.

24 **Q. Please summarize your responses regarding these issues.**

25 A. (1) As I discussed in my Rebuttal Testimony, the so-called mismatch issue  
26 is not a genuine problem and therefore does not require any change in practice.  
27 Consequently, the Commission should reject both Mr. Peterson’s proposal to  
28 require RMP to include a three-year net power cost (NPC) forecast in every  
29 general rate case filing, as well as Mr. Wilding’s proposal to reset NPC annually  
30 for ratemaking purposes. Each of these “solutions” is more troublesome – and  
31 troubling – than the alleged imperfection they are trying to remedy. The  
32 Commission should also reject Mr. Peterson’s associated proposal to require RMP  
33 to file a general rate case at least every three years.

34 (2) The Commission should reject the additional items that RMP proposes  
35 to add to the EBA and/or include in a tracking mechanism.

36 (3) I agree with Mr. Hayet that the Commission should refrain from  
37 adopting interim rates as a routine step in the EBA process.

38

39 **II. MISMATCH ISSUE**

40 **Q. Please restate the “mismatch issue” discussed by Mr. Peterson in his Direct  
41 and Rebuttal Testimony.**

42 A. The mismatch issue refers to a situation in which all the months in an EBA  
43 filing period (i.e., designated by month and *year*) do not exactly correspond to the

44 months and year in the test period that was used for setting rates in the most  
45 recent general rate case. Mr. Peterson cites this situation as a potential concern  
46 because the timing difference between the test period used to set base rates in the  
47 general rate case and the period used for the EBA filing could contribute to a  
48 divergence between NPC included in rates (set in the general rate case) and actual  
49 NPC (measured in the EBA filing).

50 **Q. What proposals have been advanced to address the “mismatch issue”?**

51 A. To address this perceived problem, Mr. Peterson proposes that NPC be  
52 projected for three years past the rate effective date in each general rate case and  
53 that, further, multi-step rate adjustments be implemented based on the NPC  
54 forecast, utilizing the multi-year NPC forecast as the baseline. In addition, RMP  
55 would be required to file a general rate case at least every three years.

56 Mr. Wilding advocates a different approach in which RMP would file,  
57 concurrently with its EBA filings, a new forecast NPC baseline that would go into  
58 effect the next calendar year. Under this approach, Base NPC rates would be reset  
59 each year.

60 **Q. What is your response regarding the import of the “mismatch issue” and the  
61 proposed “remedies”?**

62 A. As I stated in my rebuttal Testimony, the “mismatch issue” is not a  
63 genuine problem, but a natural consequence of adopting an adjustor mechanism in  
64 the first place. Therefore, it does not require any change in practice.

65           The identification of the “mismatch issue” as a “problem” requiring a  
66           “solution” illustrates the hazard of the slippery slope Utah stepped onto with the  
67           adoption of the EBA. Whereas the underlying question facing the Commission at  
68           the time the current EBA was adopted was *whether* such a mechanism was  
69           necessary in the first instance, parties are now hurtling down the hillside in search  
70           of the “optimal” NPC forecast, at the cost of either adding three-year NPC  
71           projections to which customer rates would be adjusted on a single-issue basis (in  
72           the case of DPU) or subjecting customers to a single-issue rate case every year, in  
73           which Base EBAC would be reset (in the case of RMP).

74           Neither of these approaches should be considered, let alone adopted. The  
75           adoption of the EBA turned on the question of whether such a mechanism was  
76           needed to ensure the financial health of the utility and produce fair rates for  
77           customers.<sup>1</sup> Neither DPU nor RMP has demonstrated – or even attempted to  
78           demonstrate – that the very substantial and burdensome changes each is proposing  
79           are necessary to protect the financial health of the Company. Indeed they could  
80           not make such a demonstration. As shown in Table KCH-1 below, the difference  
81           between Base EBA Costs (“EBAC”)<sup>2</sup> in rates and Actual EBAC as calculated by  
82           RMP in its most recent EBA filing has declined significantly relative to prior  
83           periods. In the most recent EBA filing, Actual EBAC, measured over the period  
84           of January 2015 to December 2015, exceeded Base EBAC, established using test

---

<sup>1</sup> See Docket No. 09-035-15, Commission Corrected Report and Order issued March 3, 2011, p. 66.

<sup>2</sup> EBAC consists of NPC + wheeling revenues.

85 year projections for July 2014 to June 2015, by only \$0.68 per MWh on a Utah-  
86 allocated basis, according to the Company's application.<sup>3</sup> Moreover, RMP is *not*  
87 required to *absorb* this difference, but is essentially allowed to recover 70 percent  
88 of it according to the sharing provision applicable to that EBA period, subject to  
89 certain Deer-Creek-related adjustments. There is not a utility financial health  
90 problem in need of remedy here.

91

**Table KCH-1**

Utah-Allocated EBAC (\$/MWh) by Calendar Year

Calendar Year	RMP Approved Base EBAC	RMP Requested Actual EBAC	Difference
2015	\$25.31	\$25.99	\$0.68
2014	\$25.38	\$27.10	\$1.72
2013	\$25.44	\$27.04	\$1.61
2012	\$23.40	\$24.39	\$0.99
2011 (3 Mos.)	\$21.39	\$23.50	\$2.11

92 Yet on the other hand, the other key factor considered by the Commission  
93 in adopting the EBA – fair rates to customers – *would* be undermined by adoption  
94 of either DPU's or RMP's proposal. Customer interests are not served by  
95 requiring Base NPC rates to be set using a three-year forecast. Approving rates  
96 based on such an extended forecast is speculative and sets a bad precedent. Even  
97 RMP opposes this approach and prefers the status quo to such a scheme.<sup>4</sup>

---

<sup>3</sup> See Docket No. 16-035-01, Response Testimony of Michael G. Wilding, p. 4. Part of the reduction in the difference between Base EBAC and Actual EBAC is attributable to accounting changes associated with the Deer Creek Mine transaction. However, even if the difference between Base EBAC and Actual EBAC were adjusted to account for Deer Creek accounting changes, it would still be significantly less than it was in the prior two years. Specifically, if Actual EBAC were adjusted to include Deer Creek Amortization costs, the difference between Base EBAC and Actual EBAC would have been \$1.06/MWh in 2015.

<sup>4</sup> Rebuttal testimony of Michael G. Wilding, pp. 4-5.

98                   But RMP's preferred option is also unreasonable for customers. Resetting  
99                   Base NPC every year sets up an annual single-issue rate case. Parties and the  
100                   Commission would be forced to contend with an annual *prospective reset* and an  
101                   annual *retroactive true-up*, increasing the complexity of what is already a very  
102                   complicated and time-consuming review process. Oregon conducts such an  
103                   exercise, annually resetting Base NPC for all PacifiCorp customers, ostensibly to  
104                   update the transition adjustment mechanism for direct access service. I participate  
105                   in these annual proceedings and they are full-fledged litigated affairs,  
106                   commanding significant time and resources. Again, the Commission should step  
107                   back and ask what *problem* is being solved by this additional administrative  
108                   burden? The answer is that there *isn't* a problem needing resolution in the first  
109                   instance.

110                   Furthermore, separately determining going-forward Base NPC in isolation  
111                   from all other factors, i.e., setting Base NPC outside the framework of a general  
112                   rate case, is not sound ratemaking practice. The Company's proposal should be  
113                   rejected on such grounds alone. But if such a new policy were to be adopted, then  
114                   the EBA should be eliminated. If RMP were to be permitted to reset Base NPC  
115                   each year irrespective of whether a general rate case is conducted, this new  
116                   procedure should be viewed as a *substitute* for the EBA, not a *compounding* of it.

117                   **Q. What are the implications of the legislature's temporary elimination of the**  
118                   **70/30 sharing mechanism for the DPU and RMP proposals regarding the**  
119                   **"mismatch issue"?**

120 A. Ironically, for the period in which the sharing mechanism is eliminated,  
121 the ultimate rates paid by customers will be the same irrespective of whether the  
122 DPU proposal is adopted, the RMP proposal is adopted, or the current mechanism  
123 remains in place. That is because the NPC charged to customers will always be  
124 trued to up to Actual NPC. Thus, neither DPU's proposal nor RMP's proposal,  
125 replete with their respective baggage, will produce a different ultimate outcome  
126 than the current mechanism, so long as the sharing mechanism is suspended.

127 **Q. If, under the current situation, all three approaches produce the same**  
128 **ultimate result, what does it matter to customers if either DPU's or RMP's**  
129 **proposal is adopted?**

130 A. First, I believe the burden of such a question falls to the parties proposing  
131 a change. If neither of the alternative approaches produces a result different than  
132 that of the current method under current conditions, then why adopt either in light  
133 of the extensive objections I have identified?

134 Second, and more importantly, the DPU and RMP approaches will  
135 produce different results and different *incentives* than the current method if and  
136 when a sharing mechanism is restored after the legislative suspension sunsets.

137 By continually resetting Base NPC outside the test period used in the most  
138 recent general rate case, both DPU's and RMP's proposals would undermine the  
139 Company's incentives to manage NPC as efficiently as possible as intended by  
140 the adoption of the sharing mechanism. In approving the EBA, the Commission  
141 struck a careful balance between ensuring the financial health of the utility and

142 fair rates for customers. The sharing mechanism, calculated using Base EBAC as  
143 established in a general rate case, was an essential ingredient in ensuring fair rates  
144 to customers, given adoption of the EBA. The Commission explained its  
145 reasoning regarding the importance of the sharing mechanism at length in its  
146 Order adopting the EBA – reasoning with which I fully agree.<sup>5</sup> Both the DPU  
147 and RMP proposals would significantly upset the balance the Commission  
148 achieved in setting incentives and sharing risks within the EBA – and without  
149 good cause. Both proposals should be rejected.

150 **Q. Please explain your objections to Mr. Peterson’s recommendation to require**  
151 **RMP to file a general rate case every three years.**

152 A. Mr. Peterson’s recommendation appears to be tied to his proposal to  
153 require a three-year NPC forecast as part of any rate case filing. If a general rate  
154 case is filed at least every three years, then there would always be a projection of  
155 NPC available that matches the EBA measurement period, consistent with Mr.  
156 Peterson’s objective.

157 Mr. Peterson’s proposal further illustrates my concerns regarding the  
158 hazard of the slippery slope. Not only does DPU’s proposed solution for the  
159 “mismatch issue” call for resetting base NPC using speculative three-year  
160 forecasts, it also triggers a call for mandatory rate case filings every three years to  
161 supply the requisite NPC forecasts. Rate case filings are burdensome endeavors.

162 They may be appropriate when current rates preclude the utility from having a fair

---

<sup>5</sup> See Docket No. 09-035-15, Commission Corrected Report and Order issued March 3, 2011, pp. 69-71.

163 opportunity to earn a reasonable rate of return or when current rates result in over-  
164 earning. But it is neither reasonable nor in the public interest to mandate such  
165 filings to “cure” the mismatch issue, which, as I have explained, is not a genuine  
166 problem in the first instance.

167

168 **III. EXPANSION OF THE EBA**

169 **Q. What additional items does RMP propose to include either in the EBA or a**  
170 **tracker mechanism?**

171 A. According to the Rebuttal Testimony of Michael G. Wilding, the  
172 Company proposes to include chemical costs, start-up fuel/gas costs, and  
173 production tax credits in either the EBA or a tracker mechanism.<sup>6</sup> In his  
174 Modification Testimony, Mr. Wilding also suggests that in the future, subject to  
175 Company request and Commission approval, the EBA could be used to true-up  
176 the costs and benefits of special contracts.<sup>7</sup>

177 **Q. Do any other parties express support for inclusion of additional costs in the**  
178 **EBA?**

179 A. Yes. Mr. Hayet on behalf of OCS supports the inclusion of start-up fuel  
180 costs and chemical costs in the EBA. He further indicates that he neither supports  
181 nor opposes inclusion of production tax credits in the EBA.

182 **Q. What is your response to Mr. Hayet’s positions?**

---

<sup>6</sup> Rebuttal Testimony of Michael G. Wilding, p. 6.

<sup>7</sup> Modification Testimony of Michael G. Wilding, p. 7.

183 A. In my Rebuttal Testimony I explained my opposition to expanding the  
184 number of items included in the EBA. I have not changed my view. Mr. Hayet is  
185 supportive of including start-up fuel costs in the EBA because they consist of a  
186 cost for fuel, which is the primary input into NPC. However, while start-up fuel  
187 costs are indeed for fuel, it is for fuel that is not directly used in the generation of  
188 kilowatt-hours, and therefore, appropriately excluded from NPC and the EBA.

189 Mr. Hayet indicates that he conditionally agrees with the inclusion of  
190 chemical costs in the EBA to the extent that the consumption of chemical  
191 products varies with the amount of generation at the Company's units.

192 While I do not disagree that consumption of chemicals may vary with  
193 generation output, I refer back to my observation that utility ratemaking is not an  
194 exercise in expense reimbursement. The current EBA reasonably captures the  
195 large bulk of kilowatt-hour-related net costs that the Company incurs in  
196 generating and procuring power to serve retail customers, and thus includes the  
197 set of cost items necessary to address the concern that material changes in NPC  
198 could affect the financial health of the Company in between rate cases if changes  
199 in costs were to go unrecovered. Expansion of the list of EBA-eligible items is  
200 not necessary to meet this objective.

201 **IV. REGULAR USE OF INTERIM RATES**

202 **Q. Did any party address the subject of interim rates in Rebuttal Testimony?**

203 A. Yes. Mr. Hayet responded to the proposal in Mr. Peterson's Direct  
204 Testimony for DPU that the Commission routinely adopt interim rates each May 1  
205 if DPU concludes, on a preliminary basis, that the Company's EBA filing did not  
206 appear to depart from previous years' filings.<sup>8</sup>

207 Mr. Hayet states that the OCS is generally supportive of DPU's  
208 recommendation to extend the time to review the Company's EBA filing, but  
209 opposes the routine adoption of interim rates as proposed by Mr. Peterson. I  
210 concur with Mr. Hayet on this point. I recommend that the Commission refrain  
211 from adopting interim rates as a routine step in the EBA process. As I understand  
212 it, the Commission's decision not to utilize interim rates for EBA purposes was  
213 reached after consideration of comments raising both legal and policy  
214 considerations.<sup>9</sup> As a matter of policy, I recommend against the use of interim  
215 rates except under very limited circumstances like those under which the  
216 Commission has in the past determined that the requirements for retroactive  
217 ratemaking have been satisfied.

218 **Q. Does this conclude your surrebuttal testimony?**

219 A. Yes, it does.

---

<sup>8</sup> Direct Testimony of Charles Peterson, pp. 7-8.

<sup>9</sup> See, e.g., Docket No. 12-035-67, Legal Brief of UIEC, May 29, 2012; Brief of the Utah Association of Energy Users, May 29, 2012; Order on EBA Interim Rate Process, August 30, 2012.