

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF)	
ROCKY MOUNTAIN POWER FOR A)	
CERTIFICATE OF CONVENIENCE AND)	DOCKET No. 09-035-54
NECESSITY AUTHORIZING CONSTRUCTION)	
OF THE MONA-OQUIRRH 500/345 KV)	DPU EXHIBIT 1.0SR
TRANSMISSION LINE)	

SURREBUTTAL TESTIMONY

JONI S. ZENGER, PHD

ON BEHALF OF THE

UTAH DIVISION OF PUBLIC UTILITIES

MAY 18, 2010

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Introduction

Q. Please state your name and occupation.

A. My name is Dr. Joni S. Zenger. I am employed by the Division of Public Utilities (Division) of the Utah Department of Commerce as a Technical Consultant.

Q. Are you the same Joni S. Zenger who filed Direct Testimony on the Certificate of Public Convenience and Necessity (CPCN) in this proceeding?

A. Yes, I am.

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

A. My testimony has four purposes. First, I augment my Direct Testimony filed on March 30, 2010 with updated information from supplemental data responses and in light of other filings related to this docket. Second, I respond to several issues raised in the Rebuttal Testimony of PacifiCorp’s (the Company) witness Mr. Darrell T. Gerrard that was filed on May 6, 2010. Third, I reiterate the Division’s position that the approval of a CPCN for the Mona to Oquirrh Transmission Project (Project) should be conditioned on the Company obtaining all required permits. Fourth, I discuss the Division’s additional recommendation that this CPCN be granted for a period of five years, as portions of this Project appear to have an indefinite timeframe for construction.

Events Related to this Case

Q. What events have transpired since you filed your Direct Testimony on March 30, 2010?

A. On the same day that I filed Direct Testimony (March 30, 2010), the Tooele County

22 Commission denied the Company's application for a conditional use permit for the
23 Project. Subsequently, on April 8, 2010, the Company filed a Petition for Review with
24 the Utility Facility Review Board (UFRB), pursuant to Utah Code Ann. § 54-14-301.¹

25 On April 8, 2010, the Division filed a Memo with the Commission requesting a
26 scheduling conference in this matter. On April 22, 2010, Tooele County filed its
27 Response to the Petition for Review. Hearings on the matter were held on May 10
28 through May 12, and a public witness hearing was held in Tooele City on May 11.

29 **Q. How do these events affect the Division's originally filed position?**

30 A. In my Direct Testimony, the Division recommended to the Commission that the
31 Application for the CPCN for the Project be granted contingent on the Company
32 receiving all required permits, including the outstanding permit in Tooele County. The
33 Company cannot construct the project until the UFRB issues a decision on the siting of
34 the line. The findings of the UFRB may require the Company to relocate portions of the
35 transmission project, including the three miles that run along the south of the Tooele City
36 limit and the Limber substation that would eventually connect the segments of the
37 Project. The project could end up being substantially different from the filed
38 configuration upon which the Division based its analysis and recommended conditional
39 approval of the CPCN on. This potential change strengthens the Division's original

¹ Docket No. 10-035-39. <http://www.psc.utah.gov/utilities/electric/elecindx/2010/1003539indx.html>.

40 position that the CPCN should be granted only upon the Company acquiring all necessary
41 permits.

42 **Q. What other information affecting this case has been filed since the Division's Direct**
43 **Testimony?**

44 A. The Division has since received updated information on the costs and timing of the
45 Project. The timing issue will be discussed in the next section in response to Mr.
46 Gerrard's Rebuttal Testimony. Regarding the cost issue, on May 6, 2010, the Division
47 received the Company's first Supplemental Response to DPU Data Request #2.5, noting
48 that the project costs were approximately \$1 billion, rather than the \$450 million
49 originally reported in the Company's response to DPU Data Request #2.5 on January 14,
50 2010, and as originally filed in Mr. Gerrard's Direct Testimony in November 2009 (line
51 145). Mr. Gerrard also explains the cost discrepancy in this Rebuttal Testimony on lines
52 171 through 206. Mr. Gerrard points out that cost estimates are not at issue in this
53 docket. The Commission narrowed the scope of this proceeding and clearly stated that
54 prudence issues for ratemaking purposes are not an issue in this docket.² However, in the
55 Company's Application, Company witness Mr. Bruce N. Williams submitted testimony
56 regarding how the Company will finance the construction of the Project. Although the
57 Division was somewhat surprised to see the cost estimate jump to \$1 billion, we agree
58 that prudence for ratemaking purposes is not being evaluated in this docket. However,

² Scheduling Order, Docket No. 09-035-54, January 12, 2010, p. 2.

59 the Division still deems the cost estimate important, as it is imperative that the Company
60 has the ability to finance the project.

61 **Q. Based on the updated cost information, did the Division conduct further analysis to**
62 **determine if the Company would still be able to finance the Project?**

63 A. Yes. The Division initially analyzed the evidence Mr. Williams filed in his November
64 2009 Direct Testimony regarding the Company's ability to finance and construct the
65 Project. Since that time the Division reviewed more recent reports from credit rating
66 agencies that confirmed the Company's favorable credit ratings. According to Standard
67 & Poor's April 30, 2010 report, PacifiCorp has an A- corporate credit rating and an
68 excellent business risk profile.³ Standard & Poor's, in setting the Company's rating, was
69 aware of the Company's aggressive capital expenditure program.⁴ Standard & Poor's
70 notes the significant financial backing PacifiCorp explicitly and implicitly has from its
71 immediate parent MidAmerican Energy Holding Company (MEHC) and the ultimate
72 parent, Berkshire Hathaway. The Company filed its Form 10-Q with the U.S. Securities
73 and Exchange Commission on May 7, 2010.⁵ This document indicates that PacifiCorp
74 continues to generate bottom line profits consistent with prior quarters and current
75 expectations and annualized operating cash flows of about \$1.1 billion.⁶ The 10-Q also

³ Docket No. 05-035-54 Compliance Filing, Standard & Poor's April 30, 2010 Global Credit Portal.

⁴ Id.

⁵ <http://www.sec.gov/Archives/edgar/data/75594/000007559410000015/pacificorp10q03312010.htm>.

⁶ PacifiCorp 10Q, March 31, 2010. The \$1.1 billion figure is derived by multiplying the sum of the quarterly net income plus depreciation and amortization by four.

76 indicates that the Company has reduced its capital expenditures from last year.
77 Combined, these documents suggest that there has not been any material change in the
78 Company's financial position and expectations compared to the time when Mr. Williams
79 filed his testimony. Therefore, even with the approximately \$600 million cost
80 adjustment, the Division still concludes that the Company will be able to finance the
81 project and should remain financially stable.

82

83 **Responses to Rebuttal Testimony of Mr. Darrell T. Gerrard**

84 **Q. What elements of Mr. Gerrard's Testimony are you addressing in this surrebuttal?**

85 A. The main issue that I disagree with in Mr. Gerrard's Testimony is the Company's request
86 to grant the CPCN for portions of the Project and give the Company "immediate
87 authority to begin construction in those jurisdictions where the local government
88 authorities have issued permits."⁷ First, the Record of Decision (ROD) from the Bureau
89 of Land Management (BLM) has not been issued to date, and the BLM's website
90 indicates that the earliest date this will be completed is in the fall of 2010.⁸ Until the
91 BLM issues the final ROD, the Company cannot begin any construction on federal land.
92 Based on the considerable opposition to the line filed in Docket No. 10-035-39, the BLM
93 may make further revisions to the siting of the line. It would be uneconomic to begin
94 building portions of the line that may have to be moved or modified.

⁷ Rebuttal Testimony of Darrell T. Gerrard, May 2010, lines 257-261.

⁸ http://www.blm.gov/ut/st/en/fo/salt_lake/planning/mona_to_oquirrh_transmission.html.

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The Limber substation and the location of a three-mile portion of the transmission line running from Limber to Oquirrh have been two of the major contentious issues in this Project. Mr. Gerrard states in his Rebuttal Testimony that the two segments the Company wants to begin construction on immediately are the 65 mile line from Mona to the planned Limber Substation in Tooele County and the 35 mile line from the site of the future Limber substation to the existing Oquirrh Substation.⁹ Mr. Gerrard states that this section of the transmission line, Limber to Oquirrh, is “critical to the entire project”¹⁰ and is the section that is the subject of the current proceeding before the UFRB.

Depending on the BLM’s ROD and the UFBR ruling, we do not know where the future Limber substation will be located or the ultimate routing and location of the transmission line, making the full Project scope uncertain. If either of these approvals moves a section of the project, other sections of the project may have to be moved in accommodation. Mr. Gerrard acknowledges the potentiality of this problem in his Rebuttal Testimony where he states, “the Tooele County issues may impact the entire project.”¹¹ Therefore, it does not appear to be rational or in the public interest to attempt to build a line from point A to point B, when the location of point B is in doubt and when this determination is critical to the overall project.

⁹ Rebuttal Testimony of Darrell T. Gerrard, May 2010, lines 151-156.

¹⁰ Id. at p. 70.

¹¹ Id. at pp. 70-71.

114 **Q. Should the Company be allowed to begin construction on portions of the project**
115 **when all required permits for the Project have not been obtained?**

116 A. No. Mr. Gerrard writes in his Rebuttal Testimony that “it is in the public interest that the
117 Company be given the immediate authority to begin construction in those jurisdictions
118 where the local government authorities have issued permits.”¹² The Division disagrees
119 with Mr. Gerrard’s view that it is in the public interest to begin construction without
120 having the necessary permits on the first phase of the construction and when the
121 determinants of the starting and ending points are unknown. The Division reaffirms its
122 originally filed position that the grant of the CPCN be conditioned upon the Company
123 receiving all of the necessary permits, including the Tooele County permit. Further, in
124 light of the case before the UFRB, the Division recommends that the Company file
125 information on any changes that may have to be made to the Project that may require
126 other permits or rights-of-way, based on the outcome of that proceeding.

127 **Q. What other items in Mr. Gerrard’s Rebuttal do you wish to respond to?**

128 A. The next issue relates to follow-up requirements after receiving a CPCN from the
129 Commission. First, the Division reiterates that the Company should file a report or letter
130 with the Commission that lists all of the required permits and the dates the permits were
131 obtained. The letter would certify that all permits are in place and would provide a
132 central document that can easily be referred to at a later time. As an example, the
133 Company’s Populus to Terminal transmission project required more than ten different

¹² Id. at lines 257-260.

134 permits from approximately 16 different agencies.¹³ Even after the conditional use
135 permits were obtained, Willard City claimed that the Company had not met all of the
136 conditions in the permit.

137
138 Although the Application for the CPCN before us (as currently proposed) requires a
139 handful of permits or conditional use agreements, the results of the UFRB and/or
140 potential litigation could result in the Company needing to obtain additional franchises or
141 permits. Each transmission project that the Company proposes to construct will vary in
142 the amount of permitting that may be required. A summary letter certifying the complete
143 list of required permits and the date the permit was obtained would ensure that the
144 Commission is enforcing Utah statute that states the Company “has receipt of the
145 consent, franchise, or permit within the time period the Commission may direct.”¹⁴

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147 Second, we recommend, as previously filed, that the Company report any other
148 significant delays in obtaining permits or if the conditions of use for any permits are
149 deemed as not being met by the local government agency granting the conditional permit.
150 These are the types of notifications that should be sent to the Commission and the
151 Division.

152 **Q. Are there any other types of reports the Division is recommending?**

¹³ Docket No. 08-035-42, Company’s Response to DPU Data Request #2.1, July, 2008.

¹⁴ Utah Code Ann. § 54-4-25(4) B.

153 A. Yes. In this particular docket, the Division recommends that the Company notify the
154 Commission and Division once the report from the UFRB is filed. The report should
155 note any changes that will be made to the original project, as well as any other permits
156 that must be obtained to move forward with construction. Finally, the Division
157 recommends that once the BLM has issued its ROD, the Company file a report noting
158 any changes and additional permits that are required to comply with the Final
159 Environmental Impact Statement.

160 **Q. Has new information emerged regarding the timing of the major elements of the**
161 **proposed project?**

162 A. Yes. The timing of some portions of the Project seem to have changed between Mr.
163 Gerrard's Direct Testimony and his Rebuttal Testimony. The Division understood that
164 the request for the CPCN was for the entire Project and that as a whole the project would
165 be completed in 2013, though some portions of the project would not be energized from
166 345kV to 500kV until a later date. This was based on the following information: Mr.
167 Gerrard's Direct Testimony, data requests the Division received from the Company, and
168 the Project web site. In Mr. Gerrard's Direct Testimony on line 498, Mr. Gerrard
169 questions the immediate need for the CPCN for the project that is scheduled for
170 completion in 2013.¹⁵ The Company's current web site for Mona to Oquirrh lists a final
171 in-service date for customers as June 2013.¹⁶ The Oquirrh to Terminal portion of the

¹⁵ Direct Testimony of Darrell T. Gerrard, November 23, 2009, lines 498-499.

¹⁶ <http://www.pacificorp.com/tran/tp/eg/gc/scmto.html>.

172 Project states an estimated in-service date of 2013 to 2014.¹⁷ In addition, the Company's
173 response to DPU Data Request #2.14 states the following:

174 Mona – Oquirrh: The in-service date is being adjusted from a June
175 2012¹⁸ in-service date to a June 2013 in-service date.

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177 Oquirrh – Terminal
178 The in-service date is being adjusted from a June 2012 in-service
179 date to a June 2013 in-service date.

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182 However, Mr. Gerrard states in his Rebuttal Testimony that some portions of this project
183 are not planned to be completed for several years.¹⁹ Lines 181-190 of Mr. Gerrard's
184 Rebuttal states the following (bold added):

185 Based on current plans, the Limber Substation is not
186 planned to built **until later in this decade** (however,
187 depending on load growth increases, it may need to be built
188 as early as 2013-14); similarly, the Clover Substation will
189 not be fully constructed until **later in the decade** (however,
190 while the entire substation will not be built immediately, it
191 now appears that some portions of this substation will need
192 to be built for local transmission and reliability purposes by
193 2013); finally the transmission line from the site of the
194 Limber substation to the Terminal substation **has no**
195 **specific projected construction date at this time**: it (and
196 associated changes to the Limber and Terminal substations)
197 will be built when load growth requires that it be built.
198

199 **Q. Is the Division concerned about project timing?**

¹⁷ <http://www.pacificorp.com/tran/tp/eg/gc/scott.html>.

¹⁸ In-service date adjustments are based on the timing identified in PacifiCorp's 2008 Integrated Resource Plan, dated May 28, 2009.

¹⁹ Rebuttal Testimony of Darrell T. Gerrard, May 2010, lines 35-37.

200 A. While the Division recognizes that there is often some uncertainty as to the completion
201 dates of major projects such as the overall Mona-Oquirrh project, the degree of
202 uncertainty expressed in Mr. Gerrard's rebuttal testimony is highly unusual. Several
203 aspects of the project are described as likely to be built "later in the decade." It is unclear
204 if this means two years or nine years. And the Limber to Terminal segment has no time
205 estimate at all.

206
207 This uncertainty is concerning for two reasons. One is that over the course of several
208 years, conditions can change. Growth in the Tooele area could change drastically, either
209 up or down, perhaps requiring a different capacity of the line or no line at all. New
210 environmental concerns could make the route or scope of future segments infeasible. The
211 Division maintains that it would not be wise for the Commission to grant a certificate for
212 a project that does not have a known and relatively close time frame. The Commission
213 should have a reasonable expectation of what the project for which it grants a certificate
214 will be.

215
216 The second reason for concern is specifically the indefinite timeframe for the Limber to
217 Terminal segment. Simply put, the Division suggests that it would not be wise public
218 policy to approve such a major project with no knowledge of when, or even whether, the
219 project will actually be built. Granting approval in such a case could potentially result in
220 a company building a project decades after being granted a certificate. The Commission

221 and the public should have a reasonable expectation as to when a project for which a
222 Certificate is sought will be built.

223 **Q. What, then, is the Division's recommendation?**

224 A. The Division is recommending that the Commission issue a Certificate for all segments
225 of the project, but that the certificate should have a five-year duration. That is, for any
226 segment of the project that is not built within five years, the Company will need to return
227 to the Commission for a new Certificate. We believe that such a five-year timeframe is a
228 reasonable compromise between issuing a blanket, open ended Certificate and not issuing
229 one at all, or issuing a certificate with some portions (those with indefinite dates)
230 excluded. Five years is a sufficient time period in which to build all or most of the
231 project, while still being near enough in time for the Commission to have some certainty
232 as to what it is approving.

233 **Q. Is it appropriate to introduce such a significant condition in rebuttal testimony?**

234 A. Normally the Division would avoid changing a recommendation at this late stage of a
235 case. However, the Division's initial understanding of the schedule for this project
236 (based upon Mr. Gerrard's Direct Testimony and DPU Data Request #2.14) was that it
237 would all be complete by the end of 2013. It was only after we filed Direct Testimony
238 that vague and/or indefinite scheduling information came to light. In view of the lateness
239 of this information, the Division believes that changing our recommendation is
240 appropriate.

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242 The public convenience and necessity of a project may be extremely different at the end
243 of the decade or at an unknown later date. The Division based its analysis under the
244 assumption that the project would be built at least within five years. The Commission
245 approved the CPCN in the Populus to Terminal line on September 4, 2009.²⁰ The Ben
246 Lomond to Terminal segment was completed and in service on March 23, 2010. The
247 remaining Populus to Ben Lomond portion is slated to be completed by December
248 2010.²¹ The Division assumed that once the Commission approved the CPCN for this
249 Project, the Company would commence to construct the line, as it did in the previous
250 case.

251 **Q. Do you have any other responsive comments to Mr. Gerrard's Rebuttal Testimony?**

252 A. Yes. The Division disagrees with Mr. Gerrard's position regarding the filing of
253 information on anticipated service to native load, Utah wholesale customers, and other
254 network customers in future CPCN cost recovery proceedings for transmission facilities.
255 While it is true that parties are able to obtain such information through discovery, the
256 Division believes that this is important information that will be a necessary aspect of such
257 proceedings. We disagree with Mr. Gerrard that such information is unnecessary in a
258 Certificate proceeding. The Commission's charge is to determine whether "present or
259 future public convenience and necessity does or will require the construction"²² of new

²⁰ Docket No. 08-035-42, Report and Order, September 4, 2009,
<http://www.psc.utah.gov/utilities/electric/elecindx/documents/0803542ROgcacopnan.pdf>.

²¹ www.pacificorp.com/tran/tp/eg/gc/ptbl.html.

²² UCA 54-4-25 (1).

260 facilities. For a transmission line, it is necessary for the Commission and parties to have
261 information as to where the electricity will go and who will or will not use it. If analysis
262 reveals that there is insufficient need for a proposed line, based either upon need in Utah
263 or the region, then it should not be granted a certificate. Also, in assessing the public
264 convenience and necessity of a line proposed to be built in Utah, a determinant of Utah
265 necessity should be given significant weight. If a proposed line will serve predominantly
266 customers located entirely outside of the state, or even outside of the PacifiCorp system,
267 then the Commission and other parties will need to consider that information.

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269 As to future cost recovery cases for transmission lines, in instances where such recovery
270 is done through a “single item rate case,” the timeframe for discovery is restricted.

271 Where it is known that certain kinds of information will be needed by the regulators to
272 make a decision, that information should be provided up-front and not be made subject to
273 the delays involved with discovery. The Division believes that it is entirely appropriate
274 for the Commission to require the Company to provide such information in future cases.
275 Such an order is not uncommon and, since we are only requesting that such an order only
276 apply to transmission projects, does not rise to the level of general applicability that
277 justifies a rulemaking proceeding.

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279 **Conclusion and Recommendations**

280 Q. **Will you please summarize the Division’s findings and analysis?**

281 A. As noted in our previously filed testimony, the Division recognizes that there is a
282 legitimate need for the transmission line to bring load from southern Utah to the Wasatch
283 Front. The Division reaches the following conclusions in this case:

- 284 • Even with the updated cost information provided, the Company will be able to
285 finance the transmission line either from its own funds or through external capital
286 sources. The estimated project costs are in the range of \$1 billion.
- 287 • The Tooele County permit is currently before the UFRB, and granting the CPCN
288 is contingent on the outcome of that proceeding. Otherwise, the Division
289 recommends the Commission grant the Application for the CPCN in order for the
290 Company to begin construction on the Project.
- 291 • The federal Record of Decision is pending and is anticipated to be filed in the fall
292 of 2010. The Division does not believe the CPCN should be delayed based on
293 this decision. However, if the ROD differs substantially from the BLM's FEIS,
294 the Company should notify the Commission and the Division within ten days of
295 any changes that must be made to the Project.
- 296 • The Division finds this line is needed and complies with the "convenience and
297 necessity" requirement based on the reasons outlined in our previously filed
298 testimony.
- 299 • The Company must file a summary report of the permits for this Project.
- 300 • The Certificate should have a duration of five years after the date of the
301 Commission's issuance of the CPCN in this docket. Project elements constructed

302 outside of that timeframe should be required to obtain a new Certificate.

303 **Q. What is the Division's recommendation in this case?**

304 A. The Division recommends issuance of the certificate contingent upon the results of the
305 UTFB decision and conditional on the Company acquiring the Tooele County permit.

306 The Division also recommends that the Project be constructed within five years of
307 receiving the CPCN for construction of the Project.

308 **Q. Does this conclude your testimony?**

309 A. Yes.

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