

**ORIGINAL**

**PUBLIC**

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	)	<b>DOCKET NO. 10-035-124</b>
<b>In the Matter of the Application of Rocky</b>	)	
<b>Mountain Power for Authority to</b>	)	<b>Exhibit No. DPU 14.0 D-RR</b>
<b>Increase Its Retail Electric Utility Service</b>	)	
<b>Rates in Utah and for Approval of Its</b>	)	<b>Direct Testimony and Exhibits</b>
<b>Proposed Electric Service Schedules and</b>	)	
<b>Electric Service Regulations.</b>	)	<b>Charles E. Peterson</b>
	)	
	)	

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**FOR THE DIVISION OF PUBLIC UTILITIES  
DEPARTMENT OF COMMERCE  
STATE OF UTAH**

**Direct Testimony of**

**Charles E. Peterson**

**May 26, 2011**

**CONFIDENTIAL VERSION—SUBJECT TO UTAH PUBLIC SERVICE COMMISSION  
RULE 746-100-16**

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**Testimony of Charles E. Peterson**

**I. INTRODUCTION AND SUMMARY**

**Q. Please state your name, business address and title.**

A. My name is Charles E. Peterson; my business address is 160 East 300 South, Salt Lake City, Utah 84114; I am a Technical Consultant in the Utah Division of Public Utilities (Division, or DPU).

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

A. The Division.

**Q. Did you previously file testimony in this docket?**

A. Yes. I filed Cost of Capital testimony on May 11, 2011 as DPU Exhibit 4.0 plus attached exhibits.

**Q. Did you file testimony with the Commission in Docket No. 10-035-126 regarding the approval of a CPCN for the proposed Lakeside 2 plant and regarding termination of negotiations for the acquisition of the Apex plant, which is located near Las Vegas, Nevada?**

A. Yes. I provided both written and oral testimony in that docket.

23 **Q. What is the purpose of your testimony in this matter?**

24 A. My testimony submits into this docket the Division's recommendations and conclusions  
25 regarding the Company's<sup>1</sup> premature and hasty termination of negotiations to acquire the  
26 Apex plant. I also update and revise the Division's recommendations based upon the  
27 Commission's Report and Order in Docket No. 10-035-126. I also briefly introduce the  
28 testimony in this docket of the Division's consultant, Richard Hahn, principal of La Capra  
29 Associates, Inc. (La Capra).

30  
31 **Q. Are you including as part of your testimony documents and exhibits from Docket No.  
32 10-035-126?**

33 A. Yes. I am including the following documents, by reference, as DPU Exhibit 14.5.

- 34 1. The Verified Application of Rocky Mountain Power for Approval of  
35 Significant Energy Resource Decision and for Certificate of Public  
36 Convenience and Necessity filed by the Company with the Commission  
37 including any supporting documents not listed below.  
38  
39 2. The Direct, Rebuttal, and Surrebuttal testimonies including any supporting  
40 exhibits and documents filed with the Commission by the following  
41 individuals:

42  
43 For Rocky Mountain Power:  
44 Stefan A. Bird  
45 Gregory N. Duvall  
46 Bruce N. Williams  
47

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<sup>1</sup> Rocky Mountain Power (RMP) is an operating division of PacifiCorp primarily performing the retail distribution operations of PacifiCorp in the eastern part (i.e. Utah, Wyoming and Idaho) of PacifiCorp's system. RMP runs no electric generators, and more importantly for my purposes, it has no debt, no preferred stock and no common stock. The fact that PacifiCorp files with the Commission under the name Rocky Mountain Power, doesn't change the fact that any cost of capital calculations are necessarily of the whole company (i.e. PacifiCorp) and not its local division. Therefore, throughout this testimony I will primarily refer to PacifiCorp, rather than RMP.

48 For the Utah Division of Public Utilities:

49 Charles E. Peterson

50 Richard S. Hahn

51  
52 For Merrimack Energy Group, Inc., the Utah Independent Evaluator:

53 Wayne J. Oliver

54  
55 For the Utah Office of Consumer Services:

56 Cheryl Murray

- 57
- 58 3. All reports and memoranda, including supporting documents and exhibits filed  
59 with the Commission by Merrimack Energy Group, Inc., the Utah Independent  
60 Evaluator under both Docket Nos. 07-035-94 and 10-035-126.
  - 61
  - 62 4. The transcript of the hearing held on March 29, 2011 for Docket Nos. 07-035-94  
63 and 10-035-126.
  - 64
  - 65 5. The Report and Order of the Public Service Commission of Utah, Docket No. 07-  
66 035-94 and Docket No. 10-035-126, issued April 20, 2011.

67  
68 Because of the volume of these documents, and the fact that the Commission, the Office of  
69 Consumer Services and the Company already have these documents, I am not physically  
70 including them with my testimony, but include them, as mentioned above, by reference.

71  
72 **Q. What is the substance of La Capra's testimony?**

73 A. Mr. Hahn, of La Capra is filing his testimony as DPU Exhibit 15.0 and associated exhibits.  
74 Mr. Hahn briefly reviews his testimony in Docket No. 10-035-126 and confirms that his  
75 position has not changed. Mr. Hahn discusses two cases that have come to his attention since  
76 the March 29, 2011 hearing in Docket No. 10-035-126 regarding utilities that were penalized  
77 for not pursuing certain courses of action. Mr. Hahn will likely provide additional testimony  
78 after the answers to the outstanding data requests, described below, are received and  
79 evaluated.

80

81 **Q. Please outline your testimony.**

82 A. First, I will review the Commission's Report and Order in Docket No. 10-035-126 as it  
83 relates to the Apex plant and compare it to the Division's position in that docket. Next, I will  
84 describe the Division's current position regarding the early termination of negotiations for  
85 the Apex plant. Then I will discuss the current data requests submitted by the Division's  
86 consultant, La Capra, in this docket and how the answers to those data requests may modify  
87 the Division's position. Finally, I will set forth the Division's estimates of economic loss  
88 suffered by Utah ratepayers and make the Division's recommendations to the Commission.  
89 The Division recommends that Utah ratepayers have suffered a present value loss of  
90 approximately \$57.6 million, and that this amount should be used to reduce the Company's  
91 revenue requirement in the current rate case.

92

93

94 **II. REVIEW OF THE UTAH PUBLIC SERVICE COMMISSION'S DECISION IN**  
95 **DOCKET NO. 10-035-126 RELATED TO PACIFICORP'S APEX DECISION**

96

97 **Q. Please outline the Division's position in Docket No. 10-035-126 with regard to the**  
98 **Company's Apex plant decision.**

99 A. As of Friday, December 10, 2010 the Company reported in a conference call to the Utah and  
100 Oregon independent evaluators (collectively, "IEs") that the Apex plant had a favorable  
101 economic present value of [REDACTED]. Therefore, the Company had concluded that the  
102 acquisition of the Apex plant was in the public interest and that it intended to consummate

103 the purchase of the plant. On Sunday afternoon, December 12, 2010 the Company, in an e-  
104 mail to the IEs, announced that it had re-evaluated the Apex plant and had decided to  
105 terminate negotiations to acquire the Apex plant. This weekend evaluation, which was done  
106 entirely outside the review of the IEs, gave the Apex plant a negative present value of [REDACTED]  
107 [REDACTED] versus the acquisition of a hypothetical Currant Creek 2 plant in 2016. Subsequently,  
108 on January 13, 2011, the Company admitted to making errors in the December weekend  
109 analysis and informed the Commission and Division that the economic present value of the  
110 Apex plant was now a positive [REDACTED] versus the same hypothetical Currant Creek 2  
111 plant.<sup>2</sup>

112  
113 Based upon the reports and testimony of the Merrimack Energy, the Utah independent  
114 evaluator (Utah IE), La Capra Associates, Inc., the Division's consultant, and the Division's  
115 own analysis, the Division concluded, among other things, that

- 116       ▪ it was inappropriate for the Company to evaluate the Apex plant using the unvetted  
117       and hypothetical Currant Creek 2 plant;
- 118       ▪ the Company did not act in the public interest when it prematurely terminated the  
119       negotiations for the Apex plant;
- 120       ▪ despite numerous opportunities in Docket No. 10-035-126 to do so, the Company  
121       never explained why it had to rush an analysis and a final decision over the weekend  
122       of December 10-12, 2010, without any consultation with IEs or regulators;
- 123       ▪ at the time they were terminated, the state of the negotiations for the Apex plant  
124       included the mutual agreement that the Company would take possession of the Apex  
125       plant at the end of 2011, over a year after the decision to terminate was made;
- 126       ▪
- 127       ▪
- 128       ▪
- 129       ▪
- 130       ▪

---

<sup>2</sup> Docket No. 10-035-126, Errata Direct Testimony of Gregory N. Duvall, Amended Confidential Exhibit RMP 2.8.

- 131           ▪ the Company had plenty of time to perform and have vetted the additional analyses  
132           necessary to significantly reduce the uncertainties around the transmission issues  
133           raised by the Company as the basis for terminating the negotiations for the Apex  
134           plant;  
135  
136           ▪ Utah ratepayers suffered significant economic loss by the failure to acquire the Apex  
137           plant.  
138

139           All of this is detailed in the Division’s testimony filed in Docket No. 10-035-126.

140

141   **Q. What is the Division’s understanding of the Commission’s Order in Docket No. 10-035-**  
142   **126 regarding the use of the hypothetical Currant Creek 2 plant?**

143   A. The Commission agrees with both the Utah IE and the Division. In its Report and Order, the  
144   Commission stated the following:

145                   **We concur with the [Utah IE] and the Division, the supplemental**  
146                   **analysis performed by the Company to evaluate the Apex project did**  
147                   **not comply with the approved evaluation process and therefore we**  
148                   **give it no weight.<sup>3</sup>**

149  
150                   **The Company's supplemental analysis comparing the costs of a**  
151                   **"hypothetical" Currant Creek 2 plant, which was not vetted or**  
152                   **reviewed by the [Utah IE], to the Apex plant, with actual costs, did not**  
153                   **comply with the approved evaluation process.<sup>4</sup>**  
154

155   **Q. What is the Division’s understanding of the Commission’s Order in Docket No. 10-035-**  
156   **126 regarding the early termination of negotiations for the Apex plant?**

157   A. The Commission does not appear to explicitly address this issue, which was raised by both  
158   the Division and the Utah IE. The Division again raises the issue that the termination of the  
159   Apex plant negotiation by the Company was premature and not in the public interest.

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<sup>3</sup> Public Service Commission of Utah, Docket No. 10-035-126, “Report and Order”, p. 22 [corrected].

<sup>4</sup> Ibid., p. 25 [corrected].

160 **Q. What other conclusions did the Commission reach in its Order in Docket No. 10-035-**  
161 **126?**

162 A. The Commission agreed with recommendations by the Division’s consultant, La Capra, that  
163 in future RFPs that generic resources not be “fixed” in the evaluations of bid resources after  
164 the time the RFP resource is expected to come online “or otherwise using ‘generic’ resources  
165 which are not benchmarks to compete with bids.”<sup>5</sup>

166  
167 The other decision the Commission made regarding Apex was that issues regarding prudence  
168 of the Company’s Apex decision should be decided in a “rate setting proceeding.” The  
169 Commission also declined a Division recommendation that the Commission open a new  
170 docket to determine the economic loss suffered by Utah ratepayers.<sup>6</sup>

171  
172 **Q. Is the Division filing these Apex plant issues in this rate case docket in response to the**  
173 **Commission’s Report and Order in Docket No. 10-035-126 stating that such issues be**  
174 **decided in a rate setting proceeding?**

175 A. Yes. In a related action, the Division filed a request for review or rehearing regarding the  
176 Apex issues in Dockets Nos. 07-035-94 and 10-035-126.

177  
178  
179  
180

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<sup>5</sup> Report and Order, pages 21-22.

<sup>6</sup> Ibid., page 22 and page 24, item 7.

181 **III. UTAH DIVISION OF PUBLIC UTILITIES' CURRENT POSITION REGARDING**  
182 **PACIFICORP'S APEX DECISION**

183  
184 **Q. Please state the Division's current position regarding the termination of negotiations by**  
185 **PacifiCorp for the Apex plant.**

186 A. The Division's current position regarding the Apex plant is mostly the same as it was in  
187 Docket No. 10-035-126. The primary differences relate to updating the Division's positions  
188 due to the decisions the Commission made in its Report and Order in that docket.  
189 Specifically, the Commission resolved the question regarding the use of a hypothetical  
190 Currant Creek 2 resource in the Company's analyses of the Apex plant as not appropriate.<sup>7</sup>  
191 The Commission also decided against a separate docket to determine economic loss due to  
192 the termination of negotiations for the Apex plant. Instead the Commission indicated that it  
193 wanted to make such a determination in a rate setting proceeding, which is why this filing is  
194 being made.<sup>8</sup>

195

196 The Division's current positions are as follows:

- 197 1. The Company's supplemental analyses of the Apex were not vetted by the IEs  
198 neither were they approved by regulators and "did not comply with the  
199 approved evaluation process."<sup>9</sup>  
200  
201 2. The Company did not act in the public interest when it prematurely terminated  
202 the negotiations for the Apex plant.

203

204

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<sup>7</sup> Report and Order, Op. Cit. pages 22 and 25.

<sup>8</sup> Report and Order, page 25, item 7.

<sup>9</sup> Report and Order, page 25, item 6.

- 205           3. For the above two reasons alone, the Division believes that there should be  
206           material consequences for PacifiCorp.  
207
- 208           4. At the time they were terminated, the state of the negotiations for the Apex  
209           plant included the mutual agreement that the Company would take possession  
210           of the Apex plant at the end of 2011, over a year from when the decision to  
211           terminate was made.  
212
- 213           5. Given the point above, the Company had plenty of time to perform and have  
214           vetted the additional analyses necessary to significantly reduce the  
215           uncertainties around the transmission issues claimed by the Company as the  
216           basis for terminating the negotiations for the Apex plant.  
217
- 218           6. As indicated by the Company's own analysis filed with the Commission on  
219           January 13, 2011, Utah ratepayers suffered significant economic loss by the  
220           failure to acquire the Apex plant.  
221
- 222           7. The economic loss to Utah ratepayers is likely greater than the Company's  
223           January 13, 2011 analysis since that analysis was based upon the hypothetical  
224           Currant Creek 2 plant and other flaws pointed out by the Division's expert, La  
225           Capra.  
226
- 227
- 228           8. The Company's analysis that put the Apex plant on the RFP's final short list,  
229           and not using Currant Creek 2 in the analysis indicated a system net present  
230           value of [REDACTED].  
231
- 232           9. As included in the Division's filed testimony in Docket No. 10-035-126, the  
233           Division's best estimate at this time is that the economic loss suffered by Utah  
234           ratepayers due to the termination of negotiations for the Apex plant is based  
235           upon a system value of \$133 million.  
236

237

238

239

240

241

**IV. OUTSTANDING DATA REQUESTS**

242

243 **Q. Since the Commission's Report and Order in Docket No. 10-035-126 was issued on**

244 **April 20, 2011, what further investigation into the Apex matter has the Division done?**

245 A. With its consultant, La Capra, the Division has sent two sets of data requests to the Company  
246 within the current docket (Docket No. 10-035-124). One data request set asked questions  
247 about a confidential PacifiCorp document that came to light in this docket regarding  
248 transmission projects. The other data request set asked the Company to perform a couple of  
249 additional IRP-style stochastic and deterministic analyses such as were performed in  
250 evaluating bids in the RFP. The Division does not expect answers to these data requests in  
251 time to be included in the direct testimony due on May 26, 2011.

252

253 **Q. What could change in the Division's position and testimony as a result of the answers to**  
254 **the outstanding data requests?**

255

256 A. The Division primarily expects the data request answers may provide refinement to the  
257 Division's estimate of economic loss suffered by Utah ratepayers.

258

259 **Q. Does the Division expect to file supplemental direct testimony to update its conclusions?**

260 A. Yes. The Division anticipates that it will file supplemental testimony as soon as practicable  
261 following the receipt of satisfactory and complete answers to its outstanding data requests.

262

263

264 **V. ESTIMATES OF ECONOMIC DAMAGES SUFFERED BY UTAH RATEPAYERS**

265

266 **Q. What estimates of economic loss suffered by Utah ratepayers is the Division**  
267 **considering?**

268 A. I am presenting a range of present value estimates. As mentioned in the section above, this  
269 range is subject to refinement based upon the receipt of answers to outstanding data requests.  
270 The range is from a system present value of [REDACTED] to [REDACTED], with an  
271 intermediate value of \$133 million. The corresponding range allocated to Utah falls within  
272 approximately [REDACTED] to [REDACTED]; the intermediate value is about \$57.6 million.  
273 The source of those numbers is discussed above and in more detail in the testimony and IE  
274 reports filed in Docket No. 10-035-126. But to summarize, the [REDACTED] figure is the  
275 amount determined in Company witness Mr. Gregory Duvall's errata direct testimony filed  
276 on January 13, 2011. The [REDACTED] figure is the present value benefit of the Apex plant  
277 the Company calculated for its short list.<sup>10</sup> The \$133 million is based upon the scenario the  
278 Division's expert consultant, La Capra, requested of the Company and described in the  
279 Division's testimony.

280

281 **Q. The [REDACTED] figure is based upon the Company's analyses comparing the**  
282 **hypothetical Carrant Creek 2 plant to the actual Apex plant. The Commission has**  
283 **rejected that analysis. Why are you including it here?**

284 A. This number was calculated by the Company as a correction to the same methodologies and

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<sup>10</sup> PacifiCorp, "(CONFIDENTIAL) All-Source Request for Proposal: Final Short List Development," October 7, 2010, page 14.

285 assumptions used in its December weekend analysis that justified rejecting the Apex plant.  
286 Therefore, the Division considers this amount to be at the lower end of the range of loss  
287 suffered by Utah ratepayers.<sup>11</sup> Again, the results of the Division's outstanding data requests  
288 may refine the economic damage calculation.

289

290 **Q. What specific number is the Division recommending as the best estimate of economic**  
291 **loss suffered by ratepayers?**

292 A. The Division's best estimate is the \$133 million on a system basis or \$57.6 million on a Utah  
293 allocated basis.

294

295 **Q. Could the Commission apply the \$57.6 million amount directly in the current rate case?**

296 A. Yes. The \$133 million figure and consequently the \$57.6 million Utah allocation are present  
297 value amounts. Therefore, in order to make Utah ratepayers whole, the Commission could  
298 deduct \$57.6 million from the amount it determines to be the appropriate revenue  
299 requirement in the rate case. In order for this lump-sum deduction to effectively make  
300 ratepayers whole, it should affect rates for one year.

301

302 **Q. Is the Division suggesting an alternative to a lump-sum deduction from this rate case's**  
303 **revenue requirement?**

304 A. Yes. As an alternative, the Division prefers that a levelized amount be deducted from rates

---

<sup>11</sup> While the Commission rejected the analyses using Currant Creek 2 as inappropriate for use in the RFP, the Commission may want to consider it as possibly appropriate for attributing economic loss to ratepayers. The Division notes too, that using the Currant Creek 2 analysis, the Company as of December 9, 2010, had analyzed the positive economic value of the Apex plant to be [REDACTED]. (See PacifiCorp Confidential Memorandum to Stefan Bird, dated December 9, 2010 recommending the purchase of the Apex plant. This is included as Appendix J in the Utah IE's January 11, 2011 report to the Commission.)

305 over a ten-year period. In other words this levelized annual amount would be deducted from  
306 rates each year over a ten-year period. The range of the Utah levelized annual rates is  
307 between [REDACTED], at the low end (should the Commission adopt the [REDACTED]  
308 figure), to about [REDACTED] (for the [REDACTED] figure. The intermediate annual  
309 amount, and the Division's recommendation, is \$8.6 million. If the Commission elects adopt  
310 the low-end [REDACTED] scenario, the Division recommends that the full Utah present value  
311 of [REDACTED] be applied in the current rate case in order to achieve a meaningful reduction  
312 in rates for ratepayers.

313  
314 The figures are levelized using the Division's recommended weighted average cost of capital  
315 for PacifiCorp in this docket, or 7.98 percent. The Utah allocation is based upon the  
316 Division's recommended "SG" interstate allocation factor, or 43.2841 percent.

317

318 **Q. What are the advantages of adopting the 10-year levelization suggestion?**

319 A. The levelized method is a benefit to the Company because the immediate reduction in rates is  
320 significantly reduced as compared to the lump-sum method. Furthermore, spreading out the  
321 Company's refund to ratepayers over a 10-year period reduces stress on the Company's cash  
322 flow needs and at the same time provides meaningful recovery to ratepayers. Additionally,  
323 because interest is earned by ratepayers, they are kept whole as well.

324

325 **Q. If the Commission adopts the Division's suggestion to adopt the 10-year levelization**  
326 **method to refund to ratepayers their economic loss, and if at a future date before the**  
327 **end of the 10-year levelization period, the Company were able to demonstrate that due**

328 **to a beneficial acquisition of resources, Utah ratepayers are no worse off than they**  
329 **would have been if the Company had acquired the Apex plant, should the Company**  
330 **continue to see its rates reduced by the levelized amount?**

331 A. In such a case, the Division would be willing to support the cessation of the levelized  
332 reductions through an appropriate Commission order. The Division would even consider a  
333 scenario for cessation of the levelized deduction if the Company could demonstrate to the  
334 Division's satisfaction that acquiring the Apex plant at the end of 2011 for the negotiated  
335 sales price was not in the public interest; the Company so far has not made such a showing.  
336 However, the Division believes that in any event the levelized deduction should be applied  
337 for at least one year due to the Company's inappropriate and imprudent actions in arriving at  
338 its decision to terminate the Apex negotiations.

339

340

341

## VI. RECOMMENDATIONS

342

343 **Q. Please summarize the Division's recommendations.**

344 A. The Division's recommendations are as follows:

345 1. The Commission should find that the Company's actions that resulted in the  
346 premature termination of negotiations for the acquisition of the Apex plant  
347 were not in the public interest.

348

349 2. As a result of the premature termination of the Apex plant negotiations, Utah  
350 ratepayers suffered economic loss.

351

352

- 353 3. The economic loss suffered by Utah ratepayers has a present value range of  
354 [REDACTED] to [REDACTED].  
355  
356 4. The Division recommends that the Commission adopt the intermediate value  
357 of \$57.6 million as the present value of economic loss suffered by Utah  
358 ratepayers.  
359  
360 5. In lieu of a \$57.6 million lump-sum deduction in the current rate case docket,  
361 the Commission could adopt a levelized deduction of \$8.6 million per year to  
362 be applied over ten years.  
363

364 Exhibit DPU 14.1 summarizes the economic loss amounts described above. DPU Exhibits  
365 14.2 – 14.4 detail the levelized loss calculations.

366

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

368 A. Yes.