

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

_____)	
In the Matter of the Application of)	
Rocky Mountain Power for Authority)	
to Increase its Retail Electric Utility)	
Service Rates in Utah and for)	Docket No. 10-035-124
Approval of its Proposed Electric)	
Service Schedules and Electric)	
Service Regulations)	
_____)	

Surrebuttal Testimony of
Maurice Brubaker
on Test Period Selection

On behalf of
Utah Industrial Energy Consumers

Project 9424
March 21, 2011



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Surrebuttal Testimony of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q ARE YOU THE SAME MAURICE BRUBAKER WHO PROVIDED DIRECT**
5 **TESTIMONY ON MARCH 9, 2011 AND REBUTTAL TESTIMONY ON MARCH 17,**
6 **2011?**

7 A Yes, I am.

8 **Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

9 A I am appearing on behalf of the Utah Industrial Energy Consumers ("UIEC").
10 Members of UIEC purchase substantial quantities of electricity from Rocky Mountain
11 Power Company ("RMP") in Utah, and are vitally interested in the outcome of this
12 proceeding.

1 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A I will address certain points in the rebuttal testimony of Division witness Dr. Zenger
3 and RMP witnesses Taylor and McDougal. In light of the fact that this is the third
4 round of testimony in this matter and that most of the points have previously been
5 covered, I am not addressing all of the positions taken and statements made by these
6 witnesses. The fact that I do not address a particular point or position in this
7 surrebuttal testimony should not be construed as acquiescence.

8 **Q ON PAGE 3 OF HER REBUTTAL TESTIMONY (DPU EXHIBIT 1.0R) DR. ZENGER**
9 **ALLEGES THAT YOU ENTIRELY MISCONSTRUE THE POINT ABOUT TEST**
10 **YEAR SELECTION WHEN YOU REFER TO “CURRENT” CONDITIONS OR**
11 **CIRCUMSTANCES AS THE BASIS FOR SETTING RATES. DO YOU AGREE**
12 **WITH DR. ZENGER’S CHARACTERIZATION?**

13 A No. First, let me repeat the testimony that Dr. Zenger finds troubling:

14 “... Based on my experience, the “best evidence” must pass the test of
15 being reliable and not speculative, while being reasonably reflective of
16 current circumstances. ...” (Maurice Brubaker Direct Testimony at 8)

17 “...The issue at hand is what reasonably current period of time that is
18 reflective of current conditions will allow the Division, Office and
19 intervenors to have a realistic chance of dealing with the utility’s data.
20 That period is calendar year 2011. ...” (*Id.* at 11)

21 In responding I would note that these statements are in the context of the
22 aspect of test year selection that relates to the validity and accuracy of the data being
23 used to construct the test year and to set rates. If the data for a proposed test year is
24 not complete and contains assumptions about important aspects of test year costs
25 that cannot be validated, no amount of theoretical argument can make the proposed
26 test year appropriate.

1 Dr. Zenger, and the RMP witnesses, seem to have lost sight of the fact that
2 there must be a balancing of interests in the selection of the test year. Dr. Zenger
3 and RMP focus primarily upon their desire to put costs into rates as soon as possible,
4 while setting aside the need to protect customers from unreliable forecasts of
5 expenses and in-service dates of assets.

6 **Q AT PAGE 8 OF HIS REBUTTAL TESTIMONY RMP WITNESS TAYLOR**
7 **CRITICIZES YOUR STATEMENTS ABOUT RMP’S NET POWER COST (“NPC”)**
8 **ASSUMPTIONS. HAS MR. TAYLOR ADDRESSED THE CRITICISMS AND**
9 **DEFICIENCIES YOU POINTED OUT AT PAGES 13 AND 14 OF YOUR DIRECT**
10 **TESTIMONY?**

11 A No. At pages 13 and 14 of my direct testimony I pointed out a number of problems
12 with the NPC forecast, particularly in calendar year 2012. This included the failure of
13 RMP to even discuss the replacement plans of contracts that are expiring and the
14 failure to state the basis for materially changed assumptions with respect to certain
15 QF contracts and other contracts. Also, I pointed out a problem with the fact that
16 changes in the level of BPA wheeling charges are not known, and likely will not be
17 knowable or verifiable in time for review even during the hearings in this matter.

18 Rather than address these issues squarely, Mr. Taylor simply brushes aside
19 the concerns and says that it would not be right to set rates using contract values that
20 will have expired prior to new rates going into effect. This predicament is not the fault
21 of customers and allowing RMP to make assumptions that have not been, and indeed
22 many of which cannot be, verified during the hearing process would put all the cards
23 in RMP’s hands and favor it at the expense of customers . . . an outcome the
24 Commission should find unacceptable.

1 **Q RMP WITNESS MCDUGAL ARGUES AT PAGE 4 OF HIS REBUTTAL**
2 **TESTIMONY THAT HAVING AN ENERGY BALANCING ACCOUNT (“EBA”) DOES**
3 **NOT ELIMINATE THE NEED FOR THE COMPANY’S PROPOSED TEST YEAR**
4 **BECAUSE OF THE 30% SHARING BAND IF ACTUAL NPC EXCEEDS FORECAST**
5 **NPC. HE CHARACTERIZES THIS AS A DISALLOWANCE OF 30% OF**
6 **“PRUDENT COSTS.” DO YOU AGREE WITH THIS CHARACTERIZATION?**

7 A No, I do not. Until last month RMP did not have a mechanism to recover any
8 increases in NPC that occur relative to test year values. Now that RMP has been
9 given the opportunity to recover 70% of the changes (for a variety of reasons that the
10 Commission expressed in its Order – including giving RMP the incentive to be
11 efficient and prudent) it complains about not getting everything it wanted. The
12 Commission considered the evidence of all the various parties over an extended
13 period of time and came to the conclusion that 70% was the appropriate number.
14 From Mr. McDougal’s arguments, it almost seems as if RMP thinks that by reaching
15 further into the future for an NPC forecast it can avoid or moderate the 30% sharing
16 percentage by starting out with higher numbers. The presence of a sharing
17 mechanism is not an excuse to reach further out beyond December 31, 2011.

18 **Q DOES THE SHARING MECHANISM OPERATE SYMMETRICALLY?**

19 A Yes. The other side of the coin is that if a higher forecast is used to set rates and
20 actual NPC comes in below the forecast NPC, customers will only be credited with
21 70% of the difference, while RMP will retain 30% as a benefit.

1 **Q TO THE EXTENT THE COMMISSION CONSIDERS THE SHARING MECHANISM**
2 **IN THE EBA AS A FACTOR IN MAKING THE TEST YEAR SELECTION, HOW**
3 **SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

4 A As I have testified previously, there are many problems with RMP's NPC forecast,
5 particularly in 2012. For a number of reasons, I believe the Commission should
6 resolve this issue in favor of customers by adopting NPCs that are closer in time and
7 better supported. It is, after all, the obligation of the utility to provide evidence to
8 support its filing, including an explanation of the basis for its adjustments and
9 assumptions. RMP has the basic information and is in control of when and how it
10 files its rate cases. Unless the Commission resolves this consideration in favor of
11 customers, RMP stands to benefit at the expense of customers, which would not be a
12 reasonable outcome. Furthermore, because the 70/30 sharing band affects both
13 ratepayers and the Company, and because the Company's forecasts are less
14 accurate the further out it forecasts, it makes sense for the benefit of both that the test
15 period be brought in closer to the calendar 2011 period.

16 **Q DR. ZENGER AND RMP WITNESSES ALSO EXPRESS CONCERN ABOUT BEING**
17 **ABLE TO INCLUDE CERTAIN INVESTMENTS IN RATE BASE, AMONG THEM**
18 **POLLUTION CONTROL MEASURES AT NAUGHTON. IN YOUR VIEW, DOES**
19 **THIS JUSTIFY RMP'S PROPOSED TEST YEAR?**

20 A No. Regardless of the test year selected in any proceeding, there likely will be
21 additions to plant in service that occur after the end of the test year. Similarly, there
22 will be retirements to plant in service, increases in depreciation reserve, increases in
23 deferred taxes and increases in margin revenue that will also occur after the end of
24 the test year and which also are not reflected in rates. These are normal happenings
25 in the regulatory world and should not be allowed to drive the test year selection.

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2 **Q IN TERMS OF RMP'S CONCERN ABOUT REFLECTING NEW INVESTMENT IN**
3 **RATE BASE, DOES IT HAVE A GOOD TRACK RECORD OF FORECASTING?**

4 A No. The evidence presented by Division witness Croft shows that RMP has
5 consistently over-forecasted its plant additions.

6 **Q TO THE EXTENT THAT THE RATES ADOPTED BY THE COMMISSION INCLUDE**
7 **PLANNED INVESTMENT THAT DOES NOT ACTUALLY GO INTO SERVICE BY**
8 **THE END OF THE TEST YEAR, IS THERE ANY WAY FOR CUSTOMERS TO**
9 **RECEIVE A CREDIT?**

10 A No, not that I am aware of. Typically when base rates are set, they are presumed just
11 and reasonable until the Commission sets a different rate. As a result, if rates are set
12 based on the inclusion of investments that do not actually go into service by the end
13 of the test year, then customers are simply out the money and RMP has benefitted.
14 This is particularly problematic given RMP's history of over-forecasting plant balances
15 as highlighted by Division witness Croft. A closer-in-time test year helps to mitigate
16 this risk to customers.

17 **Q IS IT TRUE THAT A NUMBER OF THE FORECASTED PLANT ADDITIONS THAT**
18 **RMP AND THE DIVISION SEEK TO INCLUDE IN RATE BASE AREN'T PLANNED**
19 **TO BE OPERATIONAL UNTIL AFTER THE RATE EFFECTIVE DATE, WITH MANY**
20 **NOT SCHEDULED TO GO INTO SERVICE UNTIL SOMETIME IN 2012?**

21 A Yes, that is true.

22 **Q COULD THAT RAISE A QUESTION REGARDING WHETHER THEY WILL BE**
23 **USED AND USEFUL?**

1 A Yes.

2 **Q IN ACCORDANCE WITH THE PRINCIPLE OF INCLUDING IN RATES ONLY**
3 **FACILITIES THAT ARE USED AND USEFUL TO CUSTOMERS, IS A CLOSER-IN-**
4 **TIME TEST YEAR PREFERABLE?**

5 A Yes. I believe a closer-in-time test year enhances the likelihood that forecasted
6 future plant additions will be in service by the end of the test year. Thus, the use of a
7 calendar year 2011 test year should reduce the possibility of including in rate base
8 plant that is not in service at the end of the test year.

9 Beyond that fundamental factor is also the consideration of whether plant is
10 used and useful when the rates go into effect and customers start paying them. To
11 the extent that there are plant additions forecasted to go in service between the rate
12 effective date and the end of the test year, a closer-in-time test year mitigates the
13 incidence of customers paying rates to recover costs associated with plant additions
14 that are not in service and not used and useful. With a calendar year 2011 test year
15 the maximum amount of time that customers could be required to pay for plant before
16 it is in service (assuming that the forecasts are accurate) is three months, whereas in
17 the case of RMP's proposed test year consisting of the 12 months ended June 30,
18 2012, the period of time that customers could be paying for plant before it goes into
19 service (assuming that the forecasts are accurate) is nine months, or three times as
20 long. This is another factor that I believe should be considered by the Commission in
21 determining the reasonableness of any test year proposal.

1 Q AT PAGE 4 OF HIS REBUTTAL TESTIMONY, RMP WITNESS TAYLOR ALLEGES
2 THAT IN ORDER TO USE A CALENDAR YEAR 2011 TEST YEAR ONE MUST
3 ASSUME THAT OPERATING EXPENSES ARE ANTICIPATED TO REMAIN
4 “FLAT” ON A UNIT COST BASIS. DO YOU AGREE?

5 A No. The premise of this argument is that RMP’s proposed test year is appropriate, so
6 any test year that has different costs is not acceptable. For reasons heretofore noted,
7 I reject this contention. But, let me note that Mr. Taylor’s condition with respect to
8 O&M expenses has been admittedly met by virtue of RMP’s testimony that there is no
9 increase in the per unit O&M expense (excluding NPC). With respect to NPC, RMP
10 has been given the opportunity to use an EBA which will allow it to collect an
11 appropriate share of any increases in NPC beyond what is included in rates.

12 Q PLEASE ADDRESS MR. TAYLOR’S SECOND ARGUMENT, WHICH IS THAT NET
13 RATE BASE MUST REMAIN FLAT.

14 A This argument has the same premise as does the argument about expenses, and is
15 rejected for the same reason. However, it is noted that RMP has the option to use
16 the Major Plant Addition (“MPA”) mechanism for investments exceeding 1% of rate
17 base, an option that it successfully exercised two times over the last 15 months.

18 Q HAS RMP RESPONDED TO YOUR TESTIMONY CONCERNING ITS VOLUNTARY
19 USE IN WYOMING OF A CALENDAR YEAR 2011 TEST PERIOD BASED ON A
20 FILING MADE WITHIN TWO MONTHS OF THE FILING IN UTAH?

21 A No. Rather, at pages 6 and 7 of his rebuttal testimony Mr. Taylor deflects the issue
22 and instead talks about practices in Oregon and in California. He has not explained
23 why, if a calendar year 2011 test period is appropriate and the “best evidence” in
24 Wyoming, that the same is not true for Utah.

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2 **Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

3 **A** Yes, it does.

CERTIFICATE OF SERVICE

(Docket No. 10-035-124)

I hereby certify that on this 21st day of March 2011, I caused to be emailed, a true and correct copy of the foregoing **SURREBUTTAL TESTIMONY OF MAURICE BRUBAKER** to:

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