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**Surrebuttal Testimony of Charles E. Peterson**

3

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

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

8

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

10 A. The Division.

11

12 **Q. Did you file direct and supplemental direct testimony in this Docket?**

13 A. Yes.

14

15 **Q. What is the purpose of your supplemental direct testimony in this matter?**

16 A. My surrebuttal testimony responds to certain issues and criticisms raised by PacifiCorp (the  
17 Company) witnesses in their rebuttal and supplemental rebuttal testimonies that were  
18 directed at the Division generally or at me. Mr. Richard S. Hahn, of La Capra Associates,  
19 who is the Division's expert consultant, will respond to certain issues and criticisms directed  
20 at his previous testimony and address the more technical aspects of the matters at hand.

21

22 I have not necessarily attempted to respond to each and every claim and criticism by the  
23 Company witnesses. Lack of response to a particular issue or position raised by the Company

24 by either Mr. Hahn or me should not be necessarily construed as agreement with the  
25 Company's position.

26

27 **Q. Have there been any changes to the Division's position regarding the proposed**  
28 **Lakeside 2 plant?**

29 A. No. The Division continues to recommend that the Utah Public Service Commission  
30 (Commission) approve the construction of the Lakeside 2 plant as filed in this case and issue  
31 a CPCN for the same.

32

33 **Q. What are the Division's concerns about the Apex decision?**

34 A. As highlighted in my direct testimony, the Division's primary concern is about the proximate  
35 process that resulted in the decision to terminate the negotiations with LS Power, and  
36 secondarily about content of that decision. The Division and its consultant agree with the  
37 Utah Independent Evaluator (Utah IE) that the termination of negotiations with LS Power for  
38 the acquisition of the Apex plant was premature. The process employed by the Company to  
39 reach its conclusion is questionable, as outlined in my and Mr. Hahn's direct testimony, and  
40 summarized below.

41

42 The Utah IE and the Division's consultant have documented, in addition to the weekend  
43 about-face, the questionable use of the Current Creek 2 IRP resource (CC2) as a benchmark,  
44 the changing of IRP assumptions (i.e. moving CC2 from 2018 to 2016) The Company was  
45 supposed to keep the independent evaluators (IEs) fully informed and consulted to protect  
46 not only bidders and the public from the Company perhaps making biased or other

47 inappropriate decisions, but also to protect the Company from accusations of biased or other  
48 inappropriate dealings.

49

50 **Q. Did the Company keep the IEs informed of its apparently new concerns about the Apex**  
51 **plant prior to its announcement of the decision to terminate negotiations for the Apex**  
52 **plant?**

53 A. No. This lack of informing and consulting with the IEs is documented in the Division's direct  
54 testimony.

55

56 **Q. What is the Division's continuing position regarding the termination of negotiations for**  
57 **the potential acquisition of the Apex plant?**

58 A. The Division continues to believe that the termination of the negotiations for the Apex was  
59 premature and conducted in a way that was not in the public interest.

60

61 The Division continues to conclude that the actions taken by the Company over the  
62 December 9, 2010 to December 12, 2010 weekend were hasty;<sup>1</sup> the decisions were not vetted  
63 with the IEs prior to their being made; they were based upon analyses not approved by the  
64 Commission for this RFP; used data that were not vetted by the IEs; and the rushed weekend  
65 analyses resulted, at least partially, in the mistakes admitted to by the Company in the  
66 January 13, 2011 supplemental testimony filed by Company witness Gregory N. Duvall.

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<sup>1</sup> "Hasty" and "premature" are the terms used by the Utah Independent Evaluator in characterizing the Company's actions over this time frame. Errata Final Report of the Utah IE Dated January 25, 2011 but sent Feb 6, 2011. "Hasty" pg 78, "Premature" pp. 3,4,5,91,105,111,112.

68 For example, the Utah IE and the Division's consultant have documented in filings before the  
69 Commission in this Docket, that in addition to the hasty weekend about-face, the Company's  
70 analyses regarding the Apex plant included the questionable use of the Current Creek 2 IRP  
71 resource as a benchmark and the changing of IRP assumptions (i.e. moving the Current  
72 Creek 2 IRP resource from 2018 to 2016). The Company was supposed to keep the IEs  
73 informed about the process to protect not only bidders and the public from the Company  
74 perhaps making biased or other inappropriate decisions, but also to protect the Company  
75 from having to defend against bidder and other outside party claims of inappropriate  
76 procedures and decisions.

77  
78 Based upon these foregoing points, the filings of the Utah IE, and the conclusions and  
79 analyses of the Division's consultant, Mr. Hahn, the Division has concluded that the  
80 Company's decision to terminate negotiations for the Apex plant were premature, and as  
81 stated above, not in the public interest.

82  
83 **Q. Has the Company ever explained why it had to make this critical decision over a**  
84 **weekend and outside the purview of the IEs?**

85 A. No.

86  
87 **Q. Please outline your understanding of the major points that the Company witnesses,**  
88 **Messrs. Stefan A. Bird and Gregory N. Duvall, attempt to argue in their rebuttal and**  
89 **supplemental rebuttal testimonies?**

90 A. It appears that they want to make essentially three major points. The first point is that there  
91 exist risks and uncertainties surrounding the costs associated with the Apex plant,  
92 particularly with respect to transmission upgrades, to fully make available the plant's output  
93 to the PacifiCorp service areas. According to the Company's argument, these risks and  
94 uncertainties fully justify the Company's decision to terminate the negotiations for the Apex  
95 plant.

96  
97 The second major point seems to be that the analyses the Division and its expert consultant  
98 requested should not be used to estimate the economic value to PacifiCorp of the Apex plant;  
99 therefore, it is inappropriate for the Division or its consultant to draw any conclusions from  
100 those analyses.

101  
102 The third point is that the Division's position regarding economic loss to ratepayers is  
103 "unprecedented" and violates known and accepted principles of regulation because it is based  
104 upon forecasts and stochastic analyses, not of actual, measurable amounts of money.  
105 Therefore the Commission should reject out of hand the Division's contention for losses  
106 suffered by ratepayers.<sup>2</sup>

107

108 **Q. What are your comments about the first point identified above?**

109 A. Messrs. Bird and Duvall are pleased to highlight questions and uncertainties regarding the  
110 acquisition of the Apex plant, but ignore the fact that gathering more information is the best  
111 way to answer questions and reduce uncertainties. The Company had essentially negotiated

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<sup>2</sup> Confidential Supplemental Rebuttal Testimony of Gregory N. Duvall, pp. 4 and 15, lines 71-75, and 315-322.

112 for itself a full year to answer those questions and reduce those uncertainties but chose,  
113 instead, over a weekend, not to collect further information.

114

115 **Q. Please explain.**

116 A. The original Apex bid had the Company taking possession of the Apex plant on January 1,  
117 2011.<sup>3</sup> By the time the Company decided to terminate negotiations, the plan was for the  
118 Company to close on the acquisition by December 31, 2011, more than a year after it had  
119 terminated negotiations.<sup>4</sup> This would have given the Company plenty of time to complete and  
120 evaluate, for example, the sub synchronous test referred to in its rebuttal testimony.<sup>5</sup> The  
121 Company had negotiated the position that it would not take possession of the Apex plant  
122 until the end of 2011 and had given itself plenty of "outs" from finalizing the purchase if its  
123 further investigations warranted it.<sup>6</sup>

124

125 **Q. What are some of the options the Company had available to it within the context of the**  
126 **RFP?**

127 A. First, at minimum, the Company should have fully vetted the Current Creek 2 IRP resource  
128 analysis with the IEs before drawing any conclusions. If questions arose about the propriety  
129 of using Current Creek 2 IRP resource, as a kind of benchmark, in the context of the RFP (as  
130 such questions have subsequently arisen), then the Company could have relatively easily  
131 petitioned the Commission for permission to make a variance with regard to the strictures of

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<sup>3</sup> Errata Final Report, Op. Cit., p. 62.

<sup>4</sup> Ibid. p. 75.

<sup>5</sup> Confidential Rebuttal Testimony of Stefan A. Bird, p. 18. Confidential Rebuttal Testimony of Gregory N. Duvall, pp. 5-6 and 9-10.

<sup>6</sup> Bird Rebuttal, p. 9 lines 195-197.

132 the RFP. The Company could also have petitioned the Commission for permission to extend  
133 any RFP-imposed deadlines for investigating the Apex bid. At least in the case of extending  
134 the time to investigate the Apex bid, I believe if the Division were fully apprised of the need  
135 (e.g. to complete the sub synchronous test), it would have fully supported extending the  
136 investigation period. The Company had plenty of time to pursue these courses of action. The  
137 Company had plenty of time to answer many of the questions it raises regarding Apex and  
138 reducing the uncertainty.

139

140 **Q. How do you respond to the second point you identified above?**

141 A. Regarding the second point, Mr. Hahn will respond in detail in his surrebuttal testimony.

142 However, I will make one comment. One of the contentions made by the Company's  
143 witnesses is that the analyses relied upon by the Division and its consultant, particularly in  
144 our supplemental direct testimonies, do not comply with the RFP criteria. The Division  
145 makes no pretense of trying to adhere to RFP criteria. The Division and its consultant are not  
146 trying to make a selection for a short-list among competing bids. That work was already  
147 done by the Company, and the Division accepts those results.

148

149 The purpose of the Division's economic analysis regarding Apex is to estimate the economic  
150 loss, if any, suffered by ratepayers due to the Company's decision to prematurely terminate  
151 negotiations for the Apex plant. As explained in the Division's supplemental direct  
152 testimonies (filed by Mr. Hahn and me), the Division's best estimate of the loss suffered by  
153 ratepayers, on a system basis, is currently [REDACTED]

154



155 **Q. Finally, what of the third point raised especially by Mr. Duvall in his supplemental**  
156 **rebuttal testimony?**

157 A. Mr. Duvall makes the following comments:

158 **The Commission cannot adopt the DPU proposal without making**  
159 **significant changes in underlying ratemaking policy. For example,**  
160 **adoption would necessarily indicate that rates in Utah are no longer**  
161 **required to be cost based, that the PaR production cost model using**  
162 **stochastic variables is an appropriate method to forecast costs to be**  
163 **included in rates and is acceptable for use in setting the Company's net**  
164 **power costs for ratemaking purposes, and that hypothetical costs that are**  
165 **projected to be avoided or not avoided for up to 20 years into the future**  
166 **are legitimate costs for inclusion in current rates.<sup>7</sup>**  
167

168 If these comments are taken at face value, then the Division and the Commission are  
169 effectively precluded from ever taking action regarding something the Company did not do.  
170 The economic losses, as in this case to date, will almost certainly be the subject of estimates  
171 and/or statistical or stochastic analyses. And Mr. Duvall and the Company would preclude  
172 any use of such methods. While some of this issue seems to be legal in nature, I do not  
173 believe that the Commission should be restricted from concluding to use such methods in  
174 order to assess consequences.

175  
176 **Q. Are there other issues raised by the Company's witnesses in rebuttal and supplemental**  
177 **rebuttal testimony that you want to respond to?**

178 A. Yes, I want to comment on three additional issues.

179

180 **Q. Please describe those issues and give your comments.**

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<sup>7</sup> Confidential Supplemental Rebuttal Testimony of Gregory N. Duvall, p. 5

181 A. First, Mr. Duvall suggests<sup>8</sup> that the Division is not doing its job of looking out for the public  
182 interest by proposing something that would harm the Company's stockholders. Of course, the  
183 Division looks out for the Company's private interests when they are aligned with the public  
184 interest; but we may oppose the Company when we determine that the Company's private  
185 interests, whatever they may be, are not aligned with the public interest.

186  
187 Second, and perhaps related to the first issue above, Mr. Bird makes the following comment:

188 **In addition, it is worth noting that it would not have been improper for**  
189 **the Company to consider this issue had it had an indication from the**  
190 **Oregon Commission that it would not approve acquisition of Apex at the**  
191 **time it made the decision. If any of the Company's regulatory**  
192 **commissions refuses to approve acquisition of a major system asset, such**  
193 **as a generation plant, the economics of such acquisition would be**  
194 **materially diminished unless other state commissions agree to have the**  
195 **entire cost of the asset allocated to their jurisdictions. Certainly, if this**  
196 **Commission were to indicate that it would refuse to approve the**  
197 **acquisition of a major generation plant, it would not be improper for the**  
198 **Company to consider that information in determining whether to proceed**  
199 **with the acquisition.**<sup>9</sup>

200  
201 The Company's position seems to be that the Utah Commission should cede its jurisdiction to  
202 the Oregon Commission, if the Oregon (or any other state) Commission doesn't like  
203 something that is, or would be, approved in Utah. The Division recommends that the  
204 Commission not cede determination of the public interest to the Commissions in other states,  
205 but the Division recommends instead that the Utah Commission follow Utah statutes in  
206 making its determination.

207

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<sup>8</sup> Duvall Supplemental Rebuttal, p. 17, lines 352-356.

<sup>9</sup> Bird, Op. Cit., p. 13 lines 273-282.

208 Third, Mr. Duvall takes exception to any implication that the Company did not completely  
209 and appropriately respond to the Division data request 4.23.<sup>10</sup> For the Commission's  
210 convenience, DPU Exhibits 1.1-SR and 1.2-SR<sup>11</sup> set forth the data requests and the  
211 Company's responses to DPU data requests 2.7 and 4.23, respectively. The Division  
212 comments that in data request 4.23, the Division cited data request 2.7 and in particular Table  
213 5 in the response to data request 2.7. The Division then asked the Company to perform an  
214 analysis with different assumptions. The response to data request 4.23 did not include a  
215 revised "Table 5" or anything like it. Subsequently the Division requested the information in  
216 its data request 9.1. The Division leaves it to the Commission to decide whether or not the  
217 Company completely answered the Division's data request 4.23.

218

219 **Q. Please summarize the Division's conclusions and recommendations.**

220 A. The Division is not persuaded by the Company's arguments in its rebuttal and supplemental  
221 rebuttal testimony. The conclusions and recommendations the Division made in direct and  
222 direct supplement testimony are confirmed. The principal conclusions and recommendations  
223 are as follows.

224

225 The Division concludes that the Company did not act in the public interest when it  
226 prematurely terminated negotiations for the Apex plant.

227

228 The Division recommends that the Commission find that the Company did not act in the  
229 public interest when it prematurely terminated negotiations for the Apex plant. The Division

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<sup>10</sup> Duvall Supplement Rebuttal, Op. Cit., pp. 4, and 19-20.

<sup>11</sup> The answers to data request 4.23 were also included in my Supplemental Direct Testimony as DPU Exhibit 1.1-S.

230 further recommends that the Commission open a docket for the sole purpose of determining  
231 the economic loss suffered by ratepayers due to the Company's actions and implicitly the  
232 method to assess those losses to the Company.

233  
234 I want to emphasize that opening a separate docket to evaluate the amount of economic loss  
235 suffered by ratepayers is the Division's much preferred approach. While the [REDACTED]  
236 system figure is the Division's best estimate at this time, a better analysis of the question is  
237 probably available. Certainly the Company will want to give additional input especially  
238 given the questions it has raised regarding the [REDACTED]. Other parties may appropriately  
239 want to be heard. In any case, the Division firmly believes that if the Commission finds that  
240 the Company's actions in terminating the Apex negotiations were not in the public interest,  
241 then there should be an avenue for redress for ratepayers.

242  
243 In the alternative to a new docket, consistent with its supplemental direct testimony, the  
244 Division recommends that the Commission adopt [REDACTED] as the system economic loss  
245 to ratepayers and apply the appropriate percentage to Utah ratepayers in the current general  
246 rate case Docket No. 10-035-124. As noted above, this is not the Division's preferred  
247 recommendation since there are questions surrounding the [REDACTED] figure.

248

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

250 Yes.

251

## CERTIFICATE OF SERVICE

I Hereby certify that on this 24<sup>TH</sup> Day of March, 2011, I caused to be transmitted electronically (email) a true and correct copy of the PUBLIC Prefiled Surrebuttal Testimony of Charles E. Peterson for the Utah Division of Public Utilities in Docket 10-035-126: In the Matter of the Verified Application of Rocky Mountain Power for Approval of Significant Energy Resource Decision and for Certificate of Public Convenience and Necessity

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DPU Exhibit 1.1SR

Peterson Prefiled Surrebuttal Testimony  
For DPU – 03-24-2011

DPU Data Request 2.7  
and Company Response

PLACEHOLDER

PUBLIC

03-24-2011

DPU Exhibit 1.2SR

Peterson Prefiled Surrebuttal Testimony  
For DPU – 03-24-2011

DPU Data Request 4.23  
and Company Response

PLACEHOLDER

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03-24-2011