

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

**IN THE MATTER OF THE VOLUNTARY )  
REQUEST OF ROCKY MOUNTAIN )  
POWER FOR APPROVAL OF RESOURCE ) DOCKET NO. 17-035-39  
DECISION TO REPOWER WIND )  
FACILITIES )**

**SURREBUTTAL TESTIMONY  
OF  
GAVIN MANGELSON  
FOR THE OFFICE OF CONSUMER SERVICES**

**OCTOBER, 2017**

REDACTED

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1

**INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

3 A. My name is Gavin Mangelson; I am a Utility Analyst for the Office of Consumer  
4 Services (Office). My business address is 160 East 300 South, Salt Lake City, Utah  
5 84111.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is to respond to parts of the rebuttal testimony of Ms.  
8 Cindy Crane and Mr. Timothy Hemstreet with respect to certain ratepayer protections  
9 that they assert exist. I will also summarize all of the policy recommendations of the  
10 Office as they relate to the original request for approval and the revised analyses  
11 contained in the rebuttal testimonies of Rocky Mountains Power’s (RMP or  
12 Company) witnesses. Finally, I will introduce the Office’s expert witnesses and  
13 identify the issues they cover.

14 **Q. PLEASE IDENTIFY THE OTHER WITNESSES TESTIFYING ON BEHALF**  
15 **OF THE OFFICE, AND DESCRIBE THE SUBJECT OF THEIR**  
16 **RESPECTIVE TESTIMONIES.**

17 A. As previously introduced, the Office has retained Mr. Philip Hayet of J. Kennedy and  
18 Associates, Inc., and Ms. Donna Ramas of Ramas Regulatory Consulting, LLC. Mr.  
19 Hayet’s testimony addresses the Company’s revised analysis, including the projects  
20 economics and whether or not the Company has sufficiently controlled for the  
21 significant risks to the project’s economics. Ms. Ramas’ testimony further addresses  
22 cost recovery of the project, equity return, and the proposed Revenue Tracking

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23 Mechanism (RTM). She explains how RMP shareholders would not be “penalized”  
24 without an RTM, and why deferred accounting is not necessary for the project.

25 **Q. HAS THE OVERALL POSITION OF THE OFFICE REGARDING THE**  
26 **REQUEST FOR APPROVAL OF RESOURCE DECISION CHANGED**  
27 **BASED ON REBUTTAL TESTIMONY?**

28 A. No. The position of the Office remains that the proposed wind repowering project  
29 should not be approved. While the revised analyses presented by the Company’s  
30 rebuttal witnesses produces improved economics for the project, the reasonable  
31 possibility of significant changes to the tax code coupled with a low gas/low CO2  
32 scenario, pose an unacceptable level of risk to ratepayers as further explained in both  
33 the testimonies of Mr. Hayet and Ms. Ramas.

34 **Q. IN DIRECT TESTIMONY, THE OFFICE’S WITNESSES DESCRIBED THE**  
35 **SIGNIFICANT RISKS POSED BY POTENTIAL CHANGES TO THE TAX**  
36 **CODE. IN ITS REBUTTAL TESTIMONY, HAS THE COMPANY**  
37 **ADDRESSED POTENTIAL OPTIONS TO MITIGATE THOSE RISKS TO**  
38 **RATEPAYERS?**

39 A. According to the rebuttal testimonies of Timothy Hemstreet<sup>1</sup> and Cindy Crane<sup>2</sup>, RMP  
40 has negotiated “off-ramps” that would allow it to cancel its fixed-price, turn-key  
41 contract with General Electric prior to issuing work orders. The Company states that  
42 the timing of the execution of the turbine supply contract with Vestas “also provides  
43 flexibility to allow the Company to reassess project economics, if necessary, before

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<sup>1</sup> Hemstreet Rebuttal Lines 63-80

<sup>2</sup> Crane Rebuttal at Line 18

44 executing the contract.”<sup>3</sup> Therefore, if circumstances change that negatively affect the  
45 project’s economics –such as changes to the tax code- then the Company can withdraw  
46 from the contracts so long as the Company has not already issued a work order.  
47 However, whether or not the Company chooses to utilize the off-ramps would be at the  
48 Company’s discretion, independent of the regulatory process.

49 **Q. MS. CRANE ALSO CITED UTAH CODE ANN.122 § 54-17-404 IN STATING**  
50 **THAT THE COMPANY “WILL SEEK GUIDANCE FROM THE**  
51 **COMMISSION” IN THE EVENT OF CHANGES TO THE TAX LAW**  
52 **“DURING IMPLEMENTATION”. DOES THE OFFICE BELIEVE THAT**  
53 **THIS IS A MEANINGFUL RATEPAYER PROTECTION?**

54 A. No, Ms. Crane’s statement appears to be making a commitment to bring the project  
55 before the Commission under a change in circumstances if the change occurs “during  
56 the implementation”<sup>4</sup> of the project. However, Utah Code Ann. § 54-17-404(1)(a)  
57 states: “In the event of a change in circumstances or projected costs, an energy utility  
58 may seek a commission review ...”<sup>5</sup> Furthermore, Ms. Crane only states that the  
59 Company “will seek guidance”<sup>6</sup> in the event of a change in circumstances “during  
60 implementation”, if the changes occur before implementation then the Company will  
61 merely “refresh the project economics to inform its decision to proceed or terminate”<sup>7</sup>.  
62 Thus, this offer from the Company does not alleviate risks to ratepayers from changes  
63 of circumstances that may occur before or during the implementation of the project.

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<sup>3</sup> Crane Rebuttal at line 83.

<sup>4</sup> Crane Rebuttal 117-121

<sup>5</sup> Id

<sup>6</sup> Id

<sup>7</sup> Id

64 Rather, it raises the real concern of what would occur if a change in circumstance results  
65 in marginal or no benefits to the ratepayers, but remains in the Company’s economic  
66 interest because of the increase in rate base. In such circumstances, it is not clear  
67 whether the Company would have an incentive or obligation to petition the  
68 Commission and ratepayer protections may be elusive or at least challenging to obtain.

69 **Q. WHAT DOES THE COMPANY SUGGEST WOULD HAPPEN IF THE TAX**  
70 **CODE IS CHANGED AFTER THE UNITS ARE REPOWERED?**

71 A. Ms. Crane is very clear that the Company is asking for the Commission to  
72 “determine whether the Company has adequately addressed the project risks  
73 and whether repowering is in the public interest given the information  
74 currently available<sup>8</sup>.”

75  
76 The Company is not proposing any risk mitigation for adverse changes that occur  
77 after implementation. Given the risks that exist, the best information available right  
78 now suggests that the project should be cancelled. This project, which will require  
79 about a billion-dollar investment, carries the risk that ratepayers may never receive any  
80 benefits if the tax laws change after it is too late for PacifiCorp to cancel the project, as  
81 shown in Mr. Hayet’s testimony.

82 **Q. DOES THE COMPANY’S SOLUTION REGARDING OFF RAMPS PROVIDE**  
83 **RATEPAYERS REASONABLE PROTECTION FROM THE POSSIBILITY OF**  
84 **FUEL AND CO2 COSTS REMAINING LOW FOR A LONG TIME INTO THE**  
85 **FUTURE?**

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<sup>8</sup> Cindy Crane Rebuttal Lines 128-129  
REDACTED

86 A. No. As shown in the testimony of Mr. Hayet, the economics of this project depend on  
87 assumptions regarding future fuel and CO2 costs and the possibility of off ramping  
88 does not resolve the risks associated with low gas, low CO2 costs.

89 **Q. PLEASE SUMMARIZE THE OFFICE’S VIEW REGARDING THE OFF**  
90 **RAMPS AND REGULATORY OPTIONS FOR RATEPAYER PROTECTIONS.**

91 A. In general the Office believes they are insufficient and leave too much risk with the  
92 ratepayers. One problem with the “off-ramps” is that they may not be available when  
93 tax code changes are passed. While the off ramps may be useful if tax code changes  
94 are enacted prior to when the turbine supply and installation contracts are executed, if  
95 the tax code changes do not occur until after construction begins or after construction  
96 is completed, then ratepayers would be exposed to potentially paying higher costs than  
97 they would have, had the repowering not been performed. Furthermore, whether or not  
98 to utilize these off ramps is left up to the Company without any outside checks or  
99 verification from the regulatory process or engaged stakeholders. The so-called  
100 protections that could be employed during the implementation process relies on a  
101 potentially incorrect interpretation of the law and appears again to rely solely on the  
102 initiative of the Company. Finally, this solution would still not offer adequate  
103 protection for adverse changes that may occur soon after implementation or that relate  
104 to the underlying analytical assumptions associated with gas and CO2 prices.

105 **Q. PLEASE SUMMARIZE THE OFFICE’S POLICY AND**  
106 **RECOMMENDATIONS.**

107 A. The Office continues to recommend that the Commission should reject the  
108 Company’s petition for approval as it has not been shown that it “will most likely

109 result in the acquisition, production, and delivery”<sup>2</sup> of electricity to its customers at  
110 the lowest reasonable cost and least risk possible. The Office also continues to believe  
111 that it may be in the public interest for the Company to continue its analysis and  
112 collaboration with stakeholders and bring a revised version of this proposal if and  
113 when some of the uncertainty has been eliminated. If the Commission decides to  
114 approve the proposal, then the position of the Office is that the Commission should:

- 115 • Reject the Revenue Tracking Mechanism (RTM)
- 116 • Not allow deferred accounting for the project
- 117 • Only approve the 6 projects identified on line 351 of Mr. Hayet’s testimony.
- 118 • Clearly identify the investment level for preapproval, i.e. the current Utah share of  
119 the projects **\*\*\*BEGIN CONFIDENTIAL\*\*\*** [REDACTED] if the entire  
120 request is granted, [REDACTED] if only the alternate six projects are approved.)  
121 **\*\*\*END CONFIDENTIAL\*\*\***

122 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

123 A. Yes.

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<sup>2</sup> Utah Code § 54-17-402