

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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|--|---|-----------------------|
| In the Matter of the Voluntary Request |) | Docket No. 17-035-39 |
| Of Rocky Mountain Power for Approval |) | |
| Of Resource Decision to Repower |) | Surrebuttal Testimony |
| Wind Facilities |) | of Donna Ramas |
| |) | For the Office of |
| |) | Consumer Services |

CONFIDENTIAL SURREBUTTAL TESTIMONY

OF

Donna Ramas

FOR THE OFFICE OF CONSUMER SERVICES

November 15, 2017

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1 **INTRODUCTION**

2 **Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?**

3 A. My name is Donna Ramas. I am a Certified Public Accountant licensed in
4 the State of Michigan and Principal at Ramas Regulatory Consulting, LLC,
5 with offices at 4654 Driftwood Drive, Commerce Township, Michigan
6 48382.

7 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
8 **DOCKET?**

9 A. Yes. I submitted direct testimony on behalf of the Utah Office of
10 Consumer Services (OCS) in this docket on September 20, 2017.

11 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

12 A. I respond to the rebuttal testimony of Company witness Jeffrey K. Larsen
13 with regards to the Company's proposal to establish a Resource Tracking
14 Mechanism ("RTM"). I also respond to the rebuttal testimony of Company
15 witnesses Cindy Crane and Nikki L. Koblaha regarding potential future
16 changes in tax law. Finally, I recommend that the Commission impose an
17 additional contingency and an additional requirement if it finds that the
18 wind repowering projects at issue in the case are prudent and in the
19 economic interest.

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23 **RESOURCE TRACKING MECHANISM**

24 **Q. IN YOUR DIRECT TESTIMONY, YOU RECOMMENDED THAT THE**
25 **COMPANY'S PROPOSED NEW RESOURCE TRACKING MECHANISM**
26 **BE REJECTED. DID ANY INFORMATION PRESENTED IN THE**
27 **COMPANY'S REBUTTAL TESTIMONIES CAUSE YOU TO MODIFY**
28 **YOUR POSITION THAT THE RTM SHOULD BE REJECTED?**

29 A. No, absolutely not. I continue to strongly recommend that the proposed
30 new Resource Tracking Mechanism be rejected by the Commission. As
31 addressed in my direct testimony, there is no need to establish a complex
32 recovery mechanism that would shift risks to ratepayers and add
33 substantial complexity to the regulatory process. As discussed in my
34 direct testimony, adequate means already exist to address the revenue
35 requirements associated with the proposed new wind repowering projects.
36 Therefore, there is no need for a new complex recovery mechanism for
37 the Company to go forward with the wind repowering projects if the
38 projects themselves are found to be prudent. .

39 **Q. HAS THE COMPANY INDICATED WHETHER IT WOULD BE WILLING**
40 **TO MOVE FORWARD WITH ITS PROPOSED WIND REPOWERING**
41 **PROJECTS WITHOUT A RESOURCE TRACKING MECHANISM?**

42 A. In his rebuttal testimony, Mr. Larsen indicates that the Company would be
43 willing to move forward with the project "...if there is a proper matching of
44 the costs of the projects with the benefits so that shareholders are not
45 penalized for making a prudent decision that delivers customer benefits

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46 over the long term.”¹ According to Mr. Larsen, if there is not an RTM,
47 then an adjustment “would be required” to replace the zero-cost energy
48 that flows through the Energy Balancing Account (“EBA”) with energy at
49 market cost.² In other words, costs not incurred by the Company that are
50 calculated based on “market costs” would be added to the EBA and
51 recovered from ratepayers.

52 **Q. IF THE PROJECTS ARE FOUND TO BE PRUDENT AND IN**
53 **CUSTOMERS INTEREST, WOULD RMP’S SHAREHOLDERS**
54 **SOMEHOW BE PENALIZED IF THE RTM IS REJECTED AND THE**
55 **FICTITIOUS COSTS ARE NOT ADDED TO THE EBA, AS MR. LARSEN**
56 **ALLUDES IN HIS REBUTTAL TESTIMONY?**

57 A. No. As indicated in my direct testimony, the traditional regulatory process
58 would allow the Company, and its shareholders, the opportunity to earn its
59 authorized rate of return on plant additions that are found to be prudent
60 and in the public interest without the need for a new complex recovery
61 mechanism. If the projects are found to be prudent and in the public
62 interest, and RMP forecasts that it will not earn its authorized rate of return
63 once the wind repowering projects are placed into service, it has the ability
64 to submit a rate case filing requesting authority to increase its retail
65 electric utility service rates. The Company also would have ample time to

¹ Rebuttal Testimony of Jeffrey K. Larsen at lines 196 – 198.

² *Id.* at lines 198 – 201.

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66 prepare a rate case utilizing a test period that would capture the impacts
67 of the wind repowering projects. These facts remain undisputed.

68 Additionally, information contained in the exhibits presented with
69 Mr. Larsen's rebuttal testimony contradict Mr. Larsen's contention that
70 shareholders would be "penalized" if an RTM is not implemented. The
71 table below shows the impact of the pre-tax return on the rate base
72 associated with the wind repowering projects coupled with the operation &
73 maintenance expenses, depreciation, property taxes and wind taxes (the
74 combination of which is identified by the Company as the "Total Plant
75 Revenue Requirement") based on the Company's updated assumptions
76 as compared to the Company's projected offsetting revenue requirement
77 impact of the associated production tax credits (PTCs).

78

Table 1 - Net Impact on Company of Wind Repowering Projects - Rebuttal (000s)

| | 2019 | 2020 | 2021 | 2022 |
|---------------------------------|-------------|-------------|-------------|-------------|
| Total Plant Revenue Requirement | \$ 11,694 | \$ 55,798 | \$ 59,575 | \$ 54,775 |
| PTC Benefit | \$ (13,225) | \$ (51,874) | \$ (61,702) | \$ (61,702) |
| Net Impact on Company | \$ (1,531) | \$ 3,924 | \$ (2,127) | \$ (6,927) |

79

Source: Exhibit RMP__(JKL-2R), Lines 12 and 18

80

The above numbers are based on the updated information provided in Mr.

81

Larsen's rebuttal exhibits, and show that the Company's projected benefit

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from the PTCs would exceed the return and costs associated with the

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projects in three of the first four calendar years that the projects are

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projected to be in-service. Thus, with no RTM and if a rate case is not

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85 filed by RMP that includes the wind repowering projects during the period
86 presented in Mr. Larsen's exhibits, shareholders would actually be better
87 off without the RTM if the assumptions used in Mr. Larsen's rebuttal
88 exhibit prove to be accurate. There is no need to include fictitious costs in
89 the EBA in order to not "penalize" shareholders as argued by the
90 Company. Rather, the inclusion of such fictitious costs in the EBA would
91 result in additional profits to shareholders. If the Company truly believes
92 that the amounts presented in Mr. Larsen's direct testimony are a likely
93 result of the wind repowering projects, then I fail to see how the Company
94 can honestly believe that RMP's shareholders would be penalized if the
95 Company went forward with the projects without an RTM and without
96 adding costs that would not be incurred to the EBA for recovery from
97 customers.

98 **Q. WAS THE COMPANY ASKED IF IT WOULD BE WILLING TO GO**
99 **FORWARD WITH THE WIND REPOWERING PROJECT WITHOUT THE**
100 **RTM AND WITHOUT THE ABILITY TO REPLACE THE ZERO-COST**
101 **ENERGY WITH THE MARKET COST OF ENERGY IN THE EBA?**

102 A. Yes. OCS Data Request 9.14(a) asked if it was the Company's position
103 that it would not go forward with the wind repowering projects "...if the
104 proposed RTM is rejected and it is not permitted to remove the zero-cost
105 energy from the EBA calculations and replace that energy cost at 'market
106 cost'..." The Company responded as follows:

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107 If the proposed Resource Tracking Mechanism (RTM) is rejected and
108 the zero-cost energy is not removed from the Energy Balance
109 Account (EBA), the Company will assess all of its options related to
110 its resource decision to move forward with repowering based on
111 additional regulatory exposures and potential shareholder harm that
112 may occur if anything other than a full RTM is approved.
113

114 Thus, the Commission's rejection of an RTM would not necessarily mean
115 that the project would not go forward. As indicated in my direct testimony,
116 if the wind repowering projects are found to be prudent and in the public
117 interest, and the Company goes forward with the projects, it would have
118 the ability to file a rate case if the Company forecasts that the projects
119 would cause it to earn less than its authorized rate of return. The
120 Company acknowledges this truism in its response to OCS Data Request
121 9.14(b) as follows:

122 Although not preferable to implementation of an RTM, the Company
123 acknowledges that filing one or more rate cases with fully forecast
124 test periods would potentially result in allowing the Repowering costs
125 and benefits to be captured in rates.
126

127 The Company may "prefer" to implement annual recovery mechanisms
128 that focus on only select components of its overall revenue requirements,
129 such as its proposed RTM, to recover costs outside of traditional rate case
130 proceedings and shift costs from traditional ratemaking approaches to
131 automatic mechanisms to reduce its perceived risk. However, I do not
132 agree that implementation of the Company's proposed RTM is needed or
133 preferable.

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134 **Q. IN YOUR DIRECT TESTIMONY, YOU INDICATE THAT THE COMPANY**
135 **HAS NOT PROVIDED ANY INFORMATION ADDRESSING WHETHER**
136 **THE WIND REPOWERING PROJECTS WILL CAUSE IT TO BE**
137 **UNABLE TO EARN ITS AUTHORIZED RATE OF RETURN IF ITS**
138 **REQUESTED RTM IS REJECTED, EVEN THOUGH SUCH**
139 **INFORMATION REGARDING THE COMPANY’S FORECASTED**
140 **RETURNS WAS REQUESTED.³ DID THE COMPANY PROVIDE ANY**
141 **INFORMATION IN ITS REBUTTAL FILING DEMONSTRATING THAT**
142 **THE PROPOSED WIND REPOWERING PROJECTS WOULD CAUSE IT**
143 **TO BE UNABLE TO EARN ITS AUTHORIZED RATE OF RETURN IN**
144 **THE FIRST FEW YEARS AFTER THE PROJECTS ARE PLACED INTO**
145 **SERVICE?**

146 **A. No, it did not.**

147 **Q. IN HIS REBUTTAL TESTIMONY, AT LINES 300 THROUGH 304, MR.**
148 **LARSEN INDICATES, IN PART, THAT INCLUDING THE PRODUCTION**
149 **TAX CREDITS IN THE RTM WOULD “...MATCH THE BENEFITS AND**
150 **COSTS ASSOCIATED WITH VARYING WIND PRODUCTION” SINCE**
151 **THE ENERGY IMPACT OF THE WIND PRODUCTION IS CAPTURED IN**
152 **THE EBA. IN OTHER WORDS, THE PRODUCTION TAX CREDITS**
153 **FROM THE GENERATION OF WIND ENERGY AND REDUCTION IN**
154 **ENERGY COSTS RESULTING FROM THE WIND PRODUCTION**

³ Direct Testimony of Donna Ramas, lines 211 through 228 and OCS Exhibit 3.9D.

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155 **WOULD BE MATCHED OR SYNCHRONIZED. IS THE**
156 **ESTABLISHMENT OF A NEW RECOVERY MECHANISM NECESSARY**
157 **TO ACHIEVE SUCH MATCHING?**

158 A. No. Whether or not there should be a matching of the production tax
159 credits resulting from the generation of wind energy with the reduction in
160 power costs associated with the same generated wind energy could be
161 addressed in the Company's next rate case proceeding. It is my opinion
162 that such potential modifications to the EBA mechanism should be
163 considered as part of a rate case proceeding when all parties have the
164 opportunity to opine on the appropriateness of such treatment for the
165 Commission's consideration. At that time, if the Commission deems that it
166 would be appropriate to match the PTC with the impacts of the associated
167 generation on energy costs after weighing all of the relevant evidence, it
168 could consider including the production tax credits in the EBA calculations.
169 A whole new recovery mechanism such as the RTM would not need to be
170 implemented. The Company appears to be open to considering inclusion
171 of the PTCs in the EBA calculations instead of in a new mechanism as its
172 response to OCS Data Request 9.16 states: "The Company would not
173 oppose including production tax credits (PTC) in the EBA instead of the
174 RTM."

175 **Q. IN HIS REBUTTAL TESTIMONY, MR. LARSEN ADDRESSES**
176 **SEVERAL OF THE CONCERNS RAISED IN YOUR REBUTTAL**
177 **TESTIMONY REGARDING THE COMPANY'S PROPOSED RTM**

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178 **CALCULATIONS. DOES HIS REBUTTAL ALLEVIATE THE**
179 **PROBLEMS WITH THE PROPOSED RTM RAISED IN YOUR DIRECT**
180 **TESTIMONY?**

181 A. No. As indicated on lines 553 through 559 of my direct testimony, the
182 problems and concerns associated with the Company's proposed new
183 RTM include, but are not limited to: "the complexity of tracking the costs
184 and auditing such costs; not knowing with specificity the amount included
185 in current base rates for the existing wind resources to track cost changes
186 ; proposed inclusion of labor costs when employee complement has
187 declined; ignoring the reduction in property taxes being paid on existing
188 wind resources; and loss of incentive to control costs." While Mr. Larson
189 does indicate that "...the Company does not oppose using non-labor O&M
190 in the RTM,"⁴ there is nothing in his testimony that would cause me to
191 change my positions or which alleviate the problems and concerns with
192 the RTM pointed out in my direct testimony.

193 Additionally, there is nothing in Mr. Larsen's rebuttal testimony that
194 would indicate that the Company would not be able to file a traditional rate
195 case to address the impacts of the projects if the projects are found to be
196 prudent and they cause the Company to not be able to earn its authorized
197 rate of return. There is absolutely no need for the complex new recovery
198 mechanism proposed by the Company in this case. The proposed RTM is

⁴ Rebuttal Testimony of Jeffrey K. Larsen, lines 289 – 290.

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199 based on the Company's preferences and not the Company's
200 demonstrated needs.

201 **DEFERRED ACCOUNTING**

202 **Q. IN HIS DIRECT TESTIMONY, DPU WITNESS DAVID THOMSON**
203 **RECOMMENDS THAT IF THE COMMISSION DETERMINES THAT THE**
204 **REPOWERING IS "REASONABLE, PRUDENT, AND IN THE PUBLIC**
205 **INTEREST" THAT THE COMMISSION ISSUE AN ACCOUNTING**
206 **ORDER DEFERRING THE ASSOCIATED COSTS AND BENEFITS**
207 **UNTIL THE NEXT RATE CASE.⁵ HOW DID THE COMPANY ADDRESS**
208 **THIS RECOMMENDATION IN ITS REBUTTAL FILING?**

209 A. At lines 205 – 240 of his direct testimony, Mr. Larsen describes what he
210 contends are problems associated with deferring the costs and benefits of
211 the wind repowering projects instead of using the Company's proposed
212 RTM. Mr. Larsen indicates that "...the RTM as proposed provides greater
213 benefits to customers than the method described by Mr. Thomson."

214 **Q. YOU HAVE CONSISTENTLY RECOMMENDED THAT THE PROPOSED**
215 **RTM NOT BE APPROVED. WHAT IS YOUR POSITION REGARDING**
216 **WHETHER AN ACCOUNTING ORDER THAT DEFERS THE IMPACT**
217 **OF THE REPOWERING PROJECTS FOR FUTURE RECOVERY IN**
218 **RATES NEEDED?**

⁵ Direct Testimony of David Thomson, lines 165 – 172.

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219 A. It is my opinion that a deferral is not needed, with the possible exception
220 of the treatment of the unrecovered costs associated with the assets being
221 replaced. As indicated in my direct testimony, at lines 337 – 350, if the
222 Commission determines that the wind repowering projects are prudent
223 and in the public interest, inclusive of the impacts of the recovery of the
224 assets being replaced before being fully recovered, the Commission has
225 several options to address the recovery of the unrecovered costs of the
226 assets being replaced. The Commission could allow the Company to
227 transfer the original value of the assets being replaced to the accumulated
228 depreciation reserve as proposed by the Company in its filing.
229 Alternatively, as pointed out on lines 344 – 350 of my direct testimony, the
230 Commission could allow the Company to establish a regulatory asset for
231 the unrecovered costs associated with the assets being replaced that
232 would be addressed in a future rate case proceeding. Either of these
233 methods would avoid the need to write-off the assets on RMP's books
234 allowing for future recovery of the costs.

235 I recommend that any potential deferral mechanism resulting from
236 this case be limited to the unrecovered costs associated with the projects
237 being replaced. I do not recommend that all of the costs and benefits
238 associated with the repowering be deferred for review and recovery in a
239 future rate proceeding. As addressed extensively in my direct testimony, if
240 the Commission finds the project to be reasonable, prudent and in the
241 public interest, the revenue requirement impacts of the project can be

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242 adequately addressed through traditional regulatory means. If the
243 Company forecasts that it will not earn its authorized rate of return once
244 the projects are placed into service, it can submit a rate case filing. The
245 establishment of a deferral mechanism that covers all costs and benefits
246 associated with the wind repowering projects is not needed and would add
247 complexities to the next rate case in reviewing and analyzing such costs.

248 **SHAREHOLDER BENEFITS**

249 **Q. ARE THERE ANY ADDITIONAL STATEMENTS IN MR. LARSEN'S**
250 **TESTIMONY THAT YOU WISH TO ADDRESS?**

251 A. Yes. Mr. Larsen, at lines 146 to 160 of his rebuttal testimony, addresses
252 Mr. Peaco and Mr. Higgin's direct testimonies and claims that "The
253 purported shareholder benefit they claim is the capital costs incurred to
254 fund the repowering projects." Mr. Larsen indicates that "[t]he cost of
255 capital is no different than any other prudent cost recoverable in rates if
256 incurred to provide utility service" and that "[i]t is inaccurate to say that
257 shareholders are receiving a greater benefit than customers based on the
258 fact that shareholders recover the costs incurred to provide utility service."
259 What this testimony does not acknowledge is the fact that the projects
260 proposed in this case would significantly increase the amount of capital
261 upon which a return would be earned by shareholders. In other words,
262 while it may not necessarily increase the overall percentage of return on
263 equity earned, it will increase the base upon which the equity rate is

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264 applied. Growing rate base upon which the equity return is applied is a
265 benefit by shareholders, even more so when the risk associated with
266 earning the authorized return on the expanding investment is reduced. It
267 would also result in ratepayers paying a return on the significant amount of
268 rate base associated with the projects for many years to come.

269 Given the significant concerns raised by OCS witness Hayet
270 regarding the potential net benefits and possible net detriments to
271 ratepayers, the potential return to shareholders associated with the
272 proposed wind repowering projects is a reasonable consideration in
273 evaluating the risks associated with these projects. Under the Company's
274 proposal in this case, it would recover its proposed investment and earn a
275 return on that sizable investment for its shareholders even if the projects
276 end up being only a small net benefit, or even a net detriment, to
277 ratepayers in the long term.

278 **Q. CAN YOU ELABORATE ON THE SIZE OF THE RETURN ON**
279 **INVESTMENT FOR SHAREHOLDERS THAT COULD RESULT FROM**
280 **THE PROPOSED WIND REPOWERING PROJECTS?**

281 A. Based on the revenue requirement example contained in Mr. Larsen's
282 rebuttal Exhibit RMP__(JKL-2R), the pretax return on rate base
283 associated with the projects would be \$79,202,000 in 2020, \$82,390,000
284 in 2021 and \$74,455,000 in 2022. These amounts include the debt return
285 and the equity return. Based on information contained in the examples of
286 the RTM and revenue requirement calculations contained in Mr. Larsen's

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287 rebuttal Exhibit RMP__(JKL-2R) and Exhibit RMP__(JKL-4R), the equity
 288 return on the investments are presented in the following table.

289

Table 2 - Equity Return on Wind Repowering Projects (000s)

| | 2020 | 2021 | 2022 |
|----------------------------------|------------|------------|------------|
| Net Rate Base, per RMP | \$ 743,736 | \$ 773,675 | \$ 699,159 |
| Weighted Cost of Equity, per RMP | 5.04% | 5.04% | 5.04% |
| Equity Return | \$ 37,484 | \$ 38,993 | \$ 35,238 |

290 Source: Exhibit RMP__(JKL-2), Line4 and Exhibit RMP__(JKL-4R), line 3.

291 The above table is meant to be an example of the returns that
 292 would potentially be earned on the investments by shareholders if the
 293 projects are implemented. The actual earned returns would be based on
 294 many factors, such as timing of rate case proceedings, accuracy of
 295 forecasts included in Mr. Larsen's exhibits, whether the Commission finds
 296 the investments prudent and approves RMP's request, whether the RTM
 297 mechanism is approved and/or modified, etc. While the actual return
 298 earned by shareholders will likely vary from the amounts presented above,
 299 it should give the Commission a feel for the potential annual returns to
 300 shareholders on the projects as compared to the potential net benefits or
 301 net detriments to ratepayers.

302 **SIGNIFICANT TAX RISK**

303 **Q. IN YOUR DIRECT TESTIMONY, YOU ADDRESSED THE POSSIBILITY**
 304 **THAT FEDERAL INCOME TAX RATES COULD CHANGE IN THE NOT**
 305 **TOO DISTANT FUTURE. YOU ALSO INDICATED THAT THE**

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306 **COMPANY WAS ASKED TO PROVIDE THE IMPACTS ON THE**
307 **TABLES IN MR. LINK'S DIRECT TESTIMONY AT DIFFERENT**
308 **FEDERAL TAX RATE ASSUMPTIONS, AND THAT THE COMPANY**
309 **INDICATED THAT IT HAD NOT PERFORMED THE REQUESTED**
310 **ANALYSIS.⁶ DID THE COMPANY PROVIDE A TAX SENSITIVITY**
311 **ANALYSIS SINCE YOUR DIRECT TESTIMONY WAS FILED?**

312 A. Mr. Link discussed the results of a tax sensitivity analysis he prepared in
313 his rebuttal testimony. In determining the tax policy sensitivity, Mr. Link
314 used an assumed corporate federal income tax rate of 25 percent based
315 on medium natural gas and medium CO2 price-policy assumptions. OCS
316 witness Phil Hayet addresses Mr. Link's sensitivity analysis in his
317 surrebuttal testimony.

318 **Q. DID THE COMPANY PROVIDE A TAX SENSITIVITY ANALYSIS AT**
319 **ANY OTHER POTENTIAL CORPORATE FEDERAL INCOME TAX**
320 **RATES?**

321 A. No. The Company indicated that Mr. Link did not perform any other tax
322 policy sensitivity analyses beyond the one discussed in his rebuttal
323 testimony.⁷ When asked to provide the results of Mr. Link's analysis if a
324 corporate federal income tax rate of 20 percent was assumed, the
325 Company indicated that "PacifiCorp has not performed this analysis."⁸

⁶ Direct Testimony of Donna Ramas at lines 623 – 631.

⁷ Response to OCS Data Request 9.6 (OCS Exhibit 2.1S).

⁸ *Ibid.*

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326 **Q. WHY DID MR. LINK USE A CORPORATE TAX RATE OF 25 PERCENT**
327 **IN HIS SENSITIVITY ANALYSIS?**

328 A. Mr. Link indicated that the basis for the assumed reduction was provided
329 in the rebuttal testimony of Company witness Ms. Nikki L. Koblaha.⁹ Ms.
330 Koblaha indicates that "...the Company believes that at this time it is pure
331 speculation to try to determine the ultimate outcome of tax reform in
332 2017." She also indicates that as a result, the Company has assumed a
333 compromise on the corporate income tax rate reducing the rate to 25
334 percent for purposes of modeling a tax sensitivity for the proposed
335 repowering project.¹⁰ Additionally, Company witness Crane indicates that
336 Mr. Link's analysis shows that the proposed wind repowering project
337 "...remains beneficial under the reasonable assumption that a new
338 corporate federal tax rate would not be below 25 percent, so the
339 repowering project will be in the public interest even if the corporate tax
340 rate is substantially reduced."¹¹

341 **Q. DO YOU AGREE WITH THE POSITION PRESENTED IN THE**
342 **COMPANY'S REBUTTAL TESTIMONY THAT IT IS REASONABLE TO**
343 **ASSUME THAT A NEW CORPORATE FEDERAL TAX RATE WOULD**
344 **NOT BE BELOW 25 PERCENT?**

⁹ Rebuttal Testimony of Rick T. Link at lines 649 – 652.

¹⁰ Rebuttal Testimony of Nikki L. Koblaha, lines 229 – 235.

¹¹ Rebuttal Testimony of Cindy A. Crane, lines 112 – 116.

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345 A. No. I believe that there is a distinct possibility that a new corporate tax
346 rate of 20 percent could result. The “Unified Framework for Fixing Our
347 Broken Tax Code” developed by the Trump Administration, the House
348 Committee on Ways and Means, and the Senate Committee on Finance
349 issued on September 27, 2017 would reduce the corporate federal income
350 tax rate to 20 percent. Additionally, the Tax Cuts and Jobs Act released
351 by the U.S. House of Representatives Committee on Ways and Means on
352 November 2, 2017 (hereinafter referred to as the “Tax Cuts and Jobs
353 Act”), which was released after the Company’s rebuttal testimonies were
354 filed, provides for a corporate income tax rate of 20 percent. While it is not
355 yet certain that a corporate federal income tax rate of 20 percent will
356 ultimately be signed into law, it currently appears more likely that a rate of
357 20 percent will result instead of the 25 percent rate assumed in Mr. Link’s
358 revised analysis.

359 **Q. ARE THERE ANY ADDITIONAL PROVISION IN THE TAX CUTS AND**
360 **JOBS ACT, AS RELEASED ON NOVEMBER 2, 2017, THAT COULD**
361 **HAVE A SIGNIFICANT IMPACT ON THE ECONOMIC ANALYSES**
362 **DISCUSSED IN MR. LINK’S REBUTTAL TESTIMONIES?**

363 A. Yes. In describing how the PTC is generated, Ms. Kobliha provides the
364 following explanation in her rebuttal testimony:

365 The Internal Revenue Code (“IRC”) provides that a wind facility will
366 generate a PTC equal to an inflation-adjusted 1.5 cents per kilowatt
367 hour of electricity that is produced and sold to a third-party for a
368 period of 10 years commencing with the date the facility is placed in

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369 service for income tax proposes. The current inflation-adjusted PTC
370 rate for electricity generated in 2017 is 2.4 cents per kilowatt hour.

371
372 Mr. Link's economic analysis assumes that the wind repower projects at
373 issue in this docket will qualify for the full 100 percent of the PTCs and that
374 the value of the PTCs will be based on the inflation-adjusted PTC rate.

375 The Tax Cuts and Jobs Act, as released on November 2, 2017, includes

376 Section 3501 – *Modifications to Credit for Electricity Produced from*

377 *Certain Renewable Resources*. The proposed modifications would

378 remove the inflation adjustment to the PTC rate for projects that begin

379 after the date of the enactment of the new rules and appears to revise the

380 rules for determining the beginning of construction. The Section by

381 Section Summary of the Tax Cuts and Jobs Act issued on November 2,

382 2017 indicates that it is projected that the revisions proposed in Section

383 3501 would increase federal revenues by \$12.3 billion over 2018 – 2027.

384 Thus, the changes are projected to have a substantial impact on the

385 amount of PTCs received as compared to current tax law. It is not clear to

386 me, based on the information I have reviewed to date, if the projects at

387 issue in this case would qualify for 100 percent of the PTCs or if they

388 would qualify for the inflation-adjusted PTC rate if the provisions of Section

389 3501 remain intact and become law.

390 **Q. IS IT CERTAIN THAT THE PROPOSED MODIFICATIONS TO THE**
391 **PTCS WILL BE SIGNED INTO LAW?**

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392 A. No. It is not yet known if the corporate income tax rates will be reduced.
393 It is also not yet known if the revisions to the PTCs contained in the Tax
394 Cuts and Jobs Act released on November 2, 2017 will become law.
395 However, these are real risks associated with potential changes in tax law
396 that would greatly impact whether the repowering projects at issue in this
397 case are economical.

398 **Q. IN HER DIRECT TESTIMONY, MS. CRANE INDICATES THAT HER**
399 **TESTIMONY SHOWS THAT "...COMPANY HAS ACTIVELY MANAGED**
400 **AND MITIGATED ALL AREAS OF POTENTIAL PTC RISK RAISED BY**
401 **THE PARTIES.”¹² ARE THERE SIGNIFICANT PTC RISKS THAT HAD**
402 **NOT YET BEEN RAISED BY THE PARTIES AT THE TIME THE DIRECT**
403 **TESTIMONIES WERE FILED IN THIS CASE?**

404 A. Yes. At the time my initial testimony was prepared, I did inform the
405 Commission that a lowering of the corporate tax rate would significantly
406 lower the revenue requirement value of the production tax credits.¹³
407 However, at the time my direct testimony was filed, I did not anticipate that
408 the current tax law as it pertains to PTCs may be modified. I did not
409 anticipate that new tax law would potentially repeal the inflation
410 adjustment applied to renewable energy projects beginning after a certain
411 date, or that new tax law would potentially change the determination of

¹² Rebuttal Testimony of Cindy A. Crane, lines 46 – 48.

¹³ Direct Testimony of Donna Ramas at lines 621 – 622.

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412 when construction of a qualifying facility is considered to have begun.
413 The proposed changes that may potentially impact both the amount of
414 PTCs and the value of PTCs on a cents per kilowatt hour basis caught
415 me, and presumably many others, by surprise. I now realize, based on a
416 review of the Tax Cuts and Jobs Act issued on November 2, 2017, that the
417 potential tax-related risks associated with the Company's proposed wind
418 repowering projects are much greater than I initially anticipated. This is a
419 significant risk that the Commission should not take lightly in evaluating
420 the Company's wind repowering project proposals.

421 **Q. DO YOU AGREE WITH MS. CRANE'S ASSERTION THAT ALL AREAS**
422 **OF POTENTIAL PTC RISKS RAISED BY THE PARTIES HAVE BEEN**
423 **FULLY MITIGATED?**

424 A. No, I do not. While the Company addresses how the projects would
425 qualify for 100 percent of the PTCs under various safe harbor provisions, it
426 is not yet known if changes in current tax law will result in the Company no
427 longer qualifying for 100 percent of the PTCs or if the value of the PTCs
428 on a cents per kilowatt hour basis will remain at the level assumed by the
429 Company in its filing.

430 **Q. DOES THE COMPANY ADDRESS HOW IT WILL RESPOND TO A**
431 **CHANGE IN THE FEDERAL INCOME TAX RATE, SHOULD THE RATE**
432 **CHANGE?**

433 A. Yes, to some degree. The Company has indicated that there are certain
434 off-ramps structured in its contract with General Electric to allow it to exit

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435 the project before issuing work orders if the project becomes uneconomic,
436 and that there is flexibility in the timing of the execution of the contract with
437 Vestas to allow the Company to reassess the project economics if
438 needed.¹⁴ Ms. Crane indicates that how the Company responds to a
439 change in the federal corporate income tax rate will depend on "...the
440 extent and the nature of the change."¹⁵ She states that: "If a tax rate
441 change occurs before the Company executes turbine supply and
442 installation contracts in early 2018, the Company will refresh the project
443 economics to inform its decision to proceed or terminate."¹⁶ Ms. Crane
444 then indicates that RMP will either update its request, or it will seek
445 Commission guidance if the change occurs during project implementation.
446 Ms. Crane also indicates that: "If the tax law change occurs after the
447 repowering project is completed, then the change should be addressed
448 like any other factor that occurs after a resource decision is approved by
449 the Commission based on the facts known at the time."¹⁷ Thus, if tax law
450 changes are known by early 2018, the Company will re-evaluate the
451 project before proceeding. If the tax law changes occur during project
452 implementation, the Commission may seek "guidance" from the
453 Commission. If tax law changes after the projects are complete,
454 ratepayers would be fully on the hook.

¹⁴ Rebuttal Testimony of Cindy A. Crane at lines 76 – 84.

¹⁵ *Id.* at lines 110-112.

¹⁶ *Id.* at 117 – 119.

¹⁷ *Id.* at lines 123 – 125.

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455 **Q. DO YOU RECOMMEND THAT THE COMMISSION IMPOSE**
456 **ADDITIONAL CONTINGENCIES OR REQUIREMENTS IF IT FINDS THE**
457 **WIND REPOWERING PROJECTS AT ISSUE IN THIS CASE ARE**
458 **PRUDENT AND IN THE PUBLIC INTEREST?**

459 A. Yes. I recommend that if the Commission determines that the wind
460 repowering projects are prudent and in the customer interest, despite OCS
461 witness Phil Hayet's testimony to the contrary, that it includes both a
462 contingency and a separate requirement as part of its order. The
463 contingency would be that the finding of prudence and public interest is
464 preliminary and contingent on the Commission's review of a future
465 economic analysis to be submitted by the Company that incorporates the
466 full impacts of all changes to federal tax law that are known before the off-
467 ramps in the General Electric contract expire, and before the contract with
468 Vestas is executed. At that time, the record should be re-opened to allow
469 for a review of the project economics based on known changes in tax law
470 at that later date. If new tax law, including but not limited to changes in
471 corporate income tax rates and PTC provisions, increases the risks to
472 ratepayers and causes the projects to be uneconomic, the Commission
473 could then reverse its preliminary finding of prudence and public interest.

474 **Q. WHAT ADDITIONAL REQUIREMENT DO YOU RECOMMEND BE**
475 **INCLUDED?**

476 A. It is my understanding, based on testimonies submitted in this case, that
477 the wind repowering projects proposed by the Company are driven by the

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478 economic opportunity associated with the projects qualifying for
479 Production Tax Credits under current federal income tax law rather than
480 by operational need for additional resources. While the project
481 economics associated with the substantial projected capital investment
482 are based on current tax law that provides for the PTCs, the Company
483 would have ratepayers be responsible for the risks that tax law may
484 change causing the projects to no longer be economic. I recommend that
485 if the Commission finds the projects to be prudent and in the public
486 interest, that it also requires as part of its decision that RMP be at risk for
487 changes in tax law impacting the project economics and not ratepayers.
488 RMP could then decide if it is willing to accept the risk on its proposed
489 economically driven investment associated with changing tax laws.

490 **Q. IF THE COMMISSION APPROVES EITHER ALL OF THE PROJECTS**
491 **OR A PORTION OF THE PROJECTS AT ISSUE IN THIS PROCEEDING,**
492 **DO YOU HAVE ANY FURTHER RECOMMENDATIONS FOR THE**
493 **COMMISSION'S CONSIDERATION?**

494 A. Yes. It is my understanding that there is currently a multi-state process
495 underway considering changes to the allocation of costs between the
496 various jurisdictions in which PacifiCorp operates. Given the uncertainty
497 associated with this on-going process, I recommend that the approved
498 project costs specified in the Commission's order in this proceeding, if all
499 or a portion of the projects are approved, specifically identify both the total
500 amount approved and the amount approved on a Utah jurisdictional basis.

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501 I recommend that the Commission find that the amount considered to be
502 the approved project costs under Section 54-17-402(7)(a) be based on the
503 Utah jurisdictional amount. The Rebuttal Testimony of Rick T. Link, at
504 lines 184 – 186, indicates that the “...updated total up-front capital
505 investment is \$1.083 billion...” Therefore, based on a Utah SG
506 jurisdictional factor of 42.6283%,¹⁸ the Utah jurisdictional amount
507 associated with the Company’s updated capital investment projection for
508 the project as a whole would be \$461.66 million.¹⁹ If the Commission
509 approves some, but not all, of the proposed repowering projects, then
510 the approved Utah jurisdictional amount would be the projected cost of the
511 approved repowering projects multiplied by the Utah SG jurisdictional
512 factor. In his surrebuttal testimony, OCS witness Phil Hayet has identified
513 an alternate, secondary recommendation to approve only six of the twelve
514 projects for reasons he articulates. As indicated in his testimony, the
515 projected up-front capital cost for these six projects is *****BEGIN**
516 **CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** If the
517 Commission were to approve these six projects, the Utah jurisdictional
518 amount for approval would be *****BEGIN CONFIDENTIAL***** [REDACTED]
519 [REDACTED] *****END CONFIDENTIAL*****

¹⁸ Exhibit RMP__(JKL-4), line 15, which is the Utah SG factor from Docket No. 13-035-184.

¹⁹ \$1.083 billion x 42.6283% = \$461,664,489.

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520 **Q. DOES THIS COMPLETE YOUR PREFILED SURREBUTTAL**
521 **TESTIMONY?**

522 **A. Yes.**

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