

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Rocky	:	
Mountain Power for Approval of a	:	
Significant Energy Resource Decision and	:	Docket No. 17-035-40
Voluntary Request for Approval of	:	DPU Exhibit 1.0R
Resource Decision	:	

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**REBUTTAL TESTIMONY**

**OF**

**DR. JONI S. ZENGER**

**UTAH DIVISION OF PUBLIC UTILITIES**

**January 16, 2018**

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Dr. Joni S. Zenger. I am a Technical Consultant for the Utah  
3 Division of Public Utilities (Division). My business address is 160 East 300  
4 South, Salt Lake City, Utah 84111.

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

6 A. The Division.

7 **Q. Have you previously submitted testimony in this docket?**

8 A. Yes. I submitted direct testimony on behalf of the Division in this docket on  
9 December 5, 2017.

10 **Q. What is the purpose of your rebuttal testimony?**

11 A. The purpose of my rebuttal testimony is to present evidence that was not included  
12 in Rocky Mountain Power's (the Company) Application that could have a  
13 substantial impact on the analysis presented by the Company in this docket. The  
14 new evidence I refer to is the tax reform legislation that was signed into law by  
15 President Trump on December 22, 2017 and took effect on January 1, 2018.<sup>1</sup>

16 **Q. Please provide some background for your rebuttal position.**

17 A. The Company's Application in this matter was made based on the federal  
18 corporate income tax rates that were in effect when the Company filed its  
19 Application on June 30, 2017. The Company's request for a resource decision  
20 was also based on the then-current tax law as it pertained to production tax

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<sup>1</sup> [https://www.whitehouse.gov/articles/tax-reform-going/?utm\\_source=link](https://www.whitehouse.gov/articles/tax-reform-going/?utm_source=link).

21 credits<sup>2</sup> (PTCs). Therefore, the Company's assumptions and calculations in this  
22 case have been crafted using the 35 percent federal corporate income tax rate, as  
23 well as the extension of the PTCs allowed in current tax law at that time.<sup>3</sup>

24  
25 A number of parties filed direct testimony on December 5, 2017, in this  
26 proceeding, including the following: Bela Vastag, Donna Ramas, and Philip  
27 Hayet for the Office of Consumer Services (OCS); Bradly G. Mullins on behalf of  
28 the Utah Association of Energy Users (UAE) and the Utah Industrial Energy  
29 Consumers (UIEC); Kate Bowman on behalf of Utah Clean Energy (UCE);  
30 Nancy L. Kelly on behalf of Western Resource Advocates (WRA); Gregory F.  
31 Jenner on behalf of the Interwest Energy Alliance; and Dr. Joni Zenger, Dan  
32 Peaco, Robert A Davis, Dave Thomson, and Charles E. Peterson, on behalf of the  
33 Division; collectively, the (Parties).

34  
35 Through discovery, sensitivity testing and other types of analyses, many of the  
36 Parties attempted to look at project economics using lower corporate tax rates, as  
37 there was at the time a distinct possibility that tax overhaul legislation would be  
38 passed. The U. S. House of Representatives (House) passed the Tax Cuts and  
39 Jobs Act on November 16, 2017, lowering the corporate tax rate to 20 percent,

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<sup>2</sup> The "Protecting Americans from Tax Hikes (PATH) Act of 2015 extended the availability of the PTC wind facilities under construction before January 1, 2020, but provides for a phase down (based on when construction of the project begins) eventually reaching zero for projects which begin construction after 2019.

<sup>3</sup>Id.

40 among other things.<sup>4</sup> The U.S. Senate's (Senate) version of the Tax Cuts and Jobs  
41 Act was passed on December 2, 2017,<sup>5</sup> and members of the Senate and House  
42 worked quickly to negotiate a revised final bill that was signed by Congress on  
43 December 15, 2017.<sup>6</sup>

44 **Q. Please present your rebuttal evidence and why you claim it matters in this**  
45 **proceeding.**

46 A. On December 22, 2017, the President signed into law H.R. 1, known as the Tax  
47 Cuts and Jobs Act,<sup>7</sup> which makes sweeping and some permanent modifications to  
48 the Internal Revenue Code for individuals and corporations. The act replaced the  
49 35 percent corporate tax rate with a rate of 21 percent, effective January 1, 2018.  
50 The final version of the legislation also made changes to bonus depreciation.<sup>8</sup>  
51 Corporate accountants are reviewing the tax code to determine its effects on  
52 corporations. Any tax-related analysis that the Division, as well as other Parties,  
53 has performed to date will need to be re-done or refreshed. The Division's  
54 witness, Mr. Dave Thomson, will discuss the impact of the new tax legislation on  
55 PTCs as it pertains to this docket in his rebuttal testimony.

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<sup>4</sup>Conference report to accompany the Tax Cuts and Jobs Act (H. Rept. 115-466) (as filed), p. 445,  
<https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf> .

<sup>5</sup>Id.

<sup>6</sup> Id. at p. 1.

<sup>7</sup> <https://www.whitehouse.gov/articles/tax-reform-going/>. Hassett, Kevin. Tax Reform: Where Have We  
Been and Where Are We Going? January 6, 2018.

<sup>8</sup> Conference report to accompany the Tax Cuts and Jobs Act (H. Rept. 115-466) (as filed), p. 354,  
<https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf>.

56 **Q. Would the lower 21 percent corporate income tax rate have a substantial**  
57 **impact on the analysis presented by the Company and analyzed by the**  
58 **Parties in this docket?**

59 A. Yes, it should. As previously mentioned, the Company filed its initial  
60 Application with the then-current 35 percent corporate tax rate. The PTCs  
61 received by the Company are grossed up for income taxes to determine the impact  
62 on revenue requirements. Lowering the income tax rate will reduce the pre-tax  
63 return on investments that are included in the revenue requirements, but it also  
64 significantly lowers the value of the PTCs because the non-PTC tax is  
65 significantly lower.

66  
67 Because of the legislation, much of the testimony filed by the Parties in this  
68 proceeding is no longer pertinent, as it was based on significant uncertainty  
69 surrounding the pending tax legislation. Going forward, the Parties will make  
70 their respective analyses and findings on what is now known and is no longer  
71 speculative. However, before Parties can re-do their analyses, the Company  
72 needs to file an updated Application that takes into account the new tax  
73 legislation, as well as updates to other assumptions, such as official forward prices  
74 and carbon prices. Other Parties will then need significant time to review the  
75 updated filing.

76

77 In a separate proceeding, but one which was filed contemporaneously with this  
78 Application, Rocky Mountain Power's Voluntary Request for Approval of a  
79 Resource Decision to Repower its Wind Facilities (Docket No. 17-035-39) (Wind  
80 Repowering Proceeding), Public Service Commission of Utah's (Commission)  
81 Scheduling Order was amended due to the passage of tax reform legislation,  
82 which could affect the projected customer benefits resulting from wind  
83 repowering.

84

85 In the Wind Repowering Proceeding, the Company will file on February 1, 2018,  
86 supplemental testimony including an updated economic analysis on a project-by-  
87 project basis reflecting the recently passed tax legislation and any other  
88 provisions. In addition, there the Company will update its forward price curves  
89 effective January 1, 2018 and will provide any known changes in costs and  
90 performance related to wind repowering. According to the Commission's  
91 November 22, 2017 Scheduling Order, parties in that docket will have until  
92 April 2, 2019 to file rebuttal testimony.

93

94 Additionally, the Division notes the Commission has begun investigating the  
95 legislation's effects and possible deferrals of benefits for ratepayers.

96 **Q. Is there other rebuttal evidence that needs to be considered?**

97 A. Yes. In addition to the Company's 2017R Request for Proposals (RFP) in Docket  
98 No. 17-035-23 that runs concurrent with this proceeding, the Company issued a

99 Solar Request for Proposal (RFP), and the initial shortlist results are expected this  
100 month, according to the Company's indicative schedule in its 2017S RFP.<sup>9</sup> The  
101 Division is not yet aware of the impact of the Company's Solar RFP results on  
102 this docket and reserves the right to bring this matter forward at a later time.

103

104 Also, a Technical Conference has been scheduled for January 18, 2018 in this  
105 proceeding to review the Company's RFP results and updated filing. Inasmuch as  
106 the Division's Rebuttal Testimony will be filed on January 16, 2018, two days  
107 prior to the Technical Conference, the Division reserves the right to rebut any new  
108 evidence that is presented in this case by the Company and by all intervening  
109 parties. The Technical Conference may be the appropriate time to determine if  
110 the current schedule needs to be vacated or amended in this proceeding.

111

112 The fact that the Division does not address a particular point or position in this  
113 rebuttal testimony should not be construed as acquiescence. In fact one of the  
114 purposes of this rebuttal is to reserve the right to comment on testimony or  
115 analysis of the Parties, including the Company, at a later time after the updates  
116 have been incorporated into the filing.

117 **Q. In your Direct Testimony, you recommended that the Company's proposed**  
118 **Combined Projects be rejected. Has there been any information presented**

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<sup>9</sup>[http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/2017S\\_RFP/Main\\_Documents/RFP\\_2017S\\_SOLAR\\_RFP\\_MAIN\\_DOCUMENT.pdf](http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/2017S_RFP/Main_Documents/RFP_2017S_SOLAR_RFP_MAIN_DOCUMENT.pdf)

119 **through discovery or otherwise that cause you to modify your position that**  
120 **the Application for significant and voluntary resource decisions should be**  
121 **rejected?**

122 A. No, absolutely not. I continue to strongly recommend that the proposed new wind  
123 and transmission projects will not likely result in the acquisition, production, and  
124 delivery of electricity to its customers at the lowest reasonable cost and least risk  
125 possible. The Company has not sufficiently demonstrated that the Combined  
126 Projects provide clear net benefits to ratepayers. The Division cannot recommend  
127 that the Commission find it prudent or in the public interest. Recent tax changes  
128 would seem to make benefits less likely.

129 **Q Please summarize the Division's overall rebuttal recommendation**  
130 **concerning the Company's Application.**

131 A. The Division's rebuttal position is unchanged, pending a review of Company and  
132 Party updates. The Division recommends denying approval of the Application.

133 **Q. Does this conclude your Testimony?**

134 A. Yes.