

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Rocky Mountain Power’s Application for Approval of the 2020 Energy Balancing Account)	Docket No. 20-035-01
)	
)	Surrebuttal Testimony
)	of Philip Hayet
)	For the Office of
)	Consumer Services

REDACTED VERSION

CONFIDENTIAL INFORMATION INCLUDED

Subject to Utah Public Service Commission Rule 746-1-602 and 603

January 15, 2021

REDACTED VERSION

1 **I. INTRODUCTION AND SUMMARY OF POSITIONS**

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

3 A. My name is Philip Hayet and I am a Vice President and Principal of J. Kennedy
4 and Associates, Inc. (“Kennedy and Associates”). My business address is 570
5 Colonial Park Drive, Suite 305, Roswell, Georgia, 30075.

6 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?**

7 A. Yes, I previously filed response testimony on behalf of the Utah Office of
8 Consumer Services (“OCS”) on December 10, 2020.

9 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

10 A. I am addressing the rebuttal testimony of Rocky Mountain Power (“RMP”) witness
11 Dana Ralston. Since RMP agreed to the adjustment proposed by the Division of
12 Public Utilities (the “DPU”) related to the Wyodak Unit 1 outage, the remainder of
13 my testimony will focus on the Lake Side and Dave Johnston outages.

14 **Lake Side 2 Outage**

15 **Q. IN THE ORDER IN DOCKET NO. 20-035-04 (THE RMP 2020 GENERAL**
16 **RATE CASE OR “GRC”) THE PSC REJECTED THE ADJUSTMENT YOU**
17 **PROPOSED RELATED TO THE RECOVERY OF REPAIR COSTS FOR**
18 **THE LAKE SIDE 2 OUTAGE. DOES OCS CONTINUE TO SUPPORT AN**
19 **ADJUSTMENT AFTER CONSIDERING THE PSC’S GRC DECISION ON**
20 **THIS OUTAGE?**

21 A. Yes. The Utah Public Service Commission’s (“PSC”) order states “*Significantly,*
22 *RMP followed prudent practices by performing an RCA. There is nothing in the*

23 *completed RCA that identifies negligent or imprudent actions as a likely cause of*
24 *this outage*”¹ and that the Company developed prudent practices to operate the
25 plant.²

26 I respectfully disagree and continue to recommend that the costs associated
27 with the Lake Side 2 outage not be assigned to ratepayers. While the record
28 establishes that RMP conducted an RCA, performing an RCA for a significant and
29 costly outage is a necessary, but not a sufficient demonstration of prudence on the
30 part of RMP. Likewise, although RMP may have established prudent practices and
31 policies, the cause of the outage could be due to failure to follow them in practice.
32 The absence of evidence of imprudence cannot be proof of prudence when the cause
33 of a major outage remains unknown.

34 **Q. MR. RALSTON ARGUES THAT THE 2009 AND 2019 LAKE SIDE**
35 **OUTAGES OCCURRED IN DIFFERENT PLACES WITHIN THE**
36 **GENERATORS. FOR THIS REASON, HE ARGUES THAT FAILURE TO**
37 **FIND THE CAUSE IN 2009 HAD NO BEARING ON AND COULD NOT**
38 **HAVE PREVENTED THE 2019 OUTAGE. PLEASE COMMENT.**

39 A. While the location of the outages differed, [REDACTED]

40 [REDACTED]

¹ *Application of Rocky Mountain Power for Authority to Increase its Retail Electricity Utility Service Rates in Utah and for Approval of its Proposed Electronic Service Schedules and Electric Service Regulations*, Docket 20-035-04, Confidential Order at 35-36 (December 30, 2020, Utah P.S.C.) (emphasis added).

² *Id.*

41 [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED]³ It could be that in both cases, practices and policies
45 put into place by RMP were not followed carefully by employees or contractors. If
46 so, understanding the cause of the first outage event may have heightened RMP's
47 vigilance in improving and implementing its practices or it may have found and
48 eliminated deficiencies in its training practices, which could have possibly
49 prevented the second outage event from occurring.

50 **Q. MR. RALSTON ARGUES THAT THE FOREIGN OBJECT COULD HAVE**
51 **BEEN A BOLT THAT "BROKE OFF AND WENT THROUGH THE**
52 **MACHINE."**⁴ **PLEASE COMMENT.**

53 A. This is contradicted in the 2019 RCA – Exhibit DMR-2R, at page 28, which clearly
54 states that [REDACTED]

55 **Q. DO YOU HAVE ANY FINAL COMMENTS REGARDING THIS ISSUE?**

56 A. Yes. Mr. Ralston testifies the second RCA continues to be delayed, and it is now
57 expected to be ready in mid-January. However, he states that preliminary
58 indications are that the results will also be inconclusive. Given the history of this
59 report being delayed, the OCS requests that the PSC require RMP to file it with the

³ This is discussed in the 2009 RCA at p. 19 (pdf p. 131 of 147), which was attached to Mr. Hayet's response testimony in OCS Exhibit 1.2, and in the 2019 RCA at page 4, which was attached to Mr. Ralston's rebuttal testimony in Exhibit RMP DMR-2R.

⁴ Rebuttal Testimony of Dana Ralston, Docket No. 20-035-01, January 5, 2021, at line 93.

60 PSC, and provide it to the parties when it finally does become available even if it
61 is after the order is issued in this case. Since the RCA is likely to become available
62 after the hearing in this proceeding, the OCS recommends that the PSC defer
63 judgment on this issue and allow parties the opportunity to consider addressing it
64 in the 2021 EBA proceeding.

65 **Dave Johnston 1 Outage**

66 **Q. DOES OCS CONTINUE TO SUPPORT THE DISALLOWANCE FOR THE**
67 **DAVE JOHNSTON 1 OUTAGE?**

68 **A.** Yes. As I indicated in my direct testimony, the issue is whether RMP can meet its
69 burden of proof of prudence by arguing that an outage was caused by a third party
70 contractor. In other words, should ratepayers be held liable for the cost incurred
71 due to the failings of RMP's contractors? In a prior EBA Order, the PSC made a
72 conclusion of law that:⁵

73
74 When evaluating the prudence of an expense where PacifiCorp procured a
75 contractor to perform work for PacifiCorp, relevant factors include, without
76 limitation:

- 77
78 a. the reasonableness and due diligence of PacifiCorp in entering the
79 contractual relationship, including PacifiCorp's procurement process;
80
81 b. the level and effectiveness of PacifiCorp's ongoing management of the
82 relationship, including administration, monitoring, and any necessary
83 oversight; and
84
85 c. the propriety of the contractor's actions.

⁵ *Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism*, Docket No. 18-035-01, PSC Order, at Item 5, at pg. 3 (March 12, 2019, Utah P.S.C.).

86 In this instance, the contractor's failure to correctly service the boiler feed pump it
87 built extended the outage. It would be unfair to charge ratepayers with the resulting
88 replacement power costs based on improper actions of the contractor that
89 PacifiCorp had selected and was responsible to monitor and manage.

90 **Q. MR. RALSTON ARGUES THAT THE CONTRACT WITH THE VENDOR**
91 **FOR THE REPAIR WORK DID NOT CONTAIN ANY CLAUSE FOR**
92 **COVERAGE OF REPLACEMENT POWER COSTS IF THE WORK WAS**
93 **NOT DONE PROPERLY. HE CONTENDS THE COSTS OF OBTAINING**
94 **SUCH SERVICES WOULD INCREASE IF RMP REQUIRED VENDORS**
95 **TO BEAR THE RISK OF REPLACEMENT POWER COSTS. PLEASE**
96 **COMMENT.**

97 A. In effect, Mr. Ralston is asserting that instead of RMP managing its contractors
98 properly, ratepayers would need to underwrite an insurance policy with unlimited
99 liability insulating RMP against improper work by its own contractors and vendors,
100 which is simply not fair, just, or reasonable. I urge the PSC to reject this argument.

101 **Q. IS THERE AN EVERYDAY EXAMPLE SHOWING THE INEQUITY OF**
102 **RMP'S ARGUMENT?**

103 A. Yes. Automobile manufactures from time to time issue recall notices. A famous
104 case involved dangerous airbags made for many of the major automobile brands by
105 a contractor, Takata. The recalls allowed these airbags to be replaced at the
106 automakers' expense. RMP's proposal is tantamount to an automaker saying the
107 customers should have to pay for the costs of the airbag replacement.

108 **Q. DO YOU HAVE ANY FINAL COMMENTS?**

109 A. Yes. RMP has indicated that it received a reduction in the cost of the contractor's
110 work as compensation for the error.⁶ To the extent that this credit has not already
111 been passed through to ratepayers in the GRC or elsewhere, I recommend it be used
112 to offset the replacement power costs for the outage in the event the PSC does not
113 approve the totality of the DPU's adjustment for the Dave Johnston 1 outage. I
114 acknowledge this is an operating expense rather than a power cost. However, as
115 RMP observed in the 2020 GRC, the EBA (and similar mechanisms in its other
116 jurisdictions) contains other costs that are not strictly power costs.⁷ This is the
117 minimum that should be done in this instance if the PSC does not require RMP to
118 absorb all of the replacement power costs for this Dave Johnston outage.

119 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

120 A. Yes, it does.

⁶ Response Testimony of Dana Ralston, Docket No. 20-035-01, December 10, 2020, at line 79.

⁷ Rebuttal Testimony of David G. Webb, Docket No. 20-035-04, October 5, 2020, at line 208.