

–BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH–

IN THE MATTER OF THE APPLICATION OF
ROCKY MOUNTAIN POWER FOR
AUTHORITY TO INCREASE ITS RETAIL
ELECTRIC UTILITY SERVICE RATES IN
UTAH AND FOR APPROVAL OF ITS
PROPOSED ELECTRIC SERVICE
SCHEDULES AND ELECTRIC SERVICE
REGULATIONS

DOCKET No. 20-035-04
Exhibit No. DPU 8.0 SR
Dr. Joni S. Zenger

REDACTED

FOR THE DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE
STATE OF UTAH

Surrebuttal Testimony of

Dr. Joni S. Zenger

October 29, 2020

INTRODUCTION

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Q. Are you the same Dr. Joni S. Zenger who previously submitted direct testimony in this proceeding on behalf of the Utah Division of Public Utilities (Division) on September 2, 2020?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. My surrebuttal testimony supplements my initial assessment of the Company’s acquisition of the Pryor Mountain Wind Project (Project) as contained in my direct testimony in this matter. Based on the information available to me at the time I was preparing my direct testimony, I recommended denying the Company’s Application for approval of the Project and its associated Project costs. At that time, the Division had not made an adjustment against Rocky Mountain Power’s revenue requirement in this proceeding. In my surrebuttal testimony, I demonstrate that the Company’s decision to pursue the Project was not prudent and recommend the Project costs be disallowed in their entirety.

In addition, I will reply to certain comments related to my direct testimony made by Company witness Mr. Rick T. Link and Stadion LLC (Stadion) witness Mr. Brian Dickman.

SUMMARY OF DIRECT TESTIMONY

Q. Will you please briefly re-state or summarize the key points in your direct testimony?

22 A. Yes. In my Direct Testimony, I carefully evaluated the Project to determine if the
23 Company acted reasonably, whether its decision-making process was appropriate, taking
24 into account the consequence of error and acting on facts known or reasonably knowable
25 at the time of its decision to acquire the Project. The Division determined that the
26 Company's decision to acquire the late-stage Project was time sensitive, high risk, and
27 was performed outside of any least-cost planning and request for proposal (RFP)
28 processes. Because of the benefits the Company set forth, the Division attempted to
29 evaluate the Project in a judicious manner. The Division did not recommend an
30 adjustment against Rocky Mountain Power's revenue requirement at that time, but
31 indicated that it may do so as the docket progresses.

32 The Division indicated that it did not want to make a prudence determination until
33 it had a chance to review and conduct further discovery on the matter and until it had an
34 opportunity to review the Company's and other intervenor parties' rebuttal testimony in
35 the case.

36 Initial concerns addressed in my Direct Testimony included the Project's
37 economics, in particular whether the project economics that included the modeled
38 renewable energy credits (RECs), make the Project worth pursuing. I explained that the
39 Project fulfills a contract the Company executed with Vitesse on June 27, 2019, for the
40 purchase of all RECs generated by the Project under the Company's Oregon Schedule
41 272 Agreement.¹ I recommended that until the Schedule 272 Agreement in Oregon has

¹ Direct Testimony of Joelle R. Steward, p.12, lines 236 – 245; p. 13 lines 254 – 258.

42 been vetted and approved, the Project benefits in this general rate case should be
43 calculated using the pre-REC or without REC scenarios that the Company's other
44 projects in this proceeding have been evaluated by. I pointed to the fact the Project's
45 depreciable life is 30 years and the Vitesse contract is for 25 years. The Company's cost-
46 of-service customers will receive "bundled" renewable energy from the Project for its last
47 five years, when the value of the produced RECs is uncertain. Will the deteriorating
48 value under different price and policy scenarios be what remains once the Vitesse
49 agreement ends? I concluded that the Project must be carefully evaluated to determine
50 whether there is a high probability that customers will be better off with the Project than
51 without it.

52 As opposed to traditional resource acquisitions, the Company's development of
53 the Project does not result from a near-term energy, capacity, or Renewable Portfolio
54 Standard compliance need. The Company has taken a lot of risks venturing into this
55 project. It has circumvented most regulatory hurdles in order to make this acquisition
56 happen. The Project was not part of any type of least-cost planning process put in place
57 by this Commission, and I could not find any analysis of the Project in the Company's
58 2017 or 2019 IRPs. Further, the Company bypassed competitive market bidding and
59 procurement processes. When the Company filed a Notice of Exception with the Oregon
60 Public Utility Commission (OPUC).² The OPUC wrote the following (*italics added*):³

² PacifiCorp's Notice of Exception under OAR 860-089-0100, PacifiCorp Report, September 16, 2019.

³ Docket No. LC 70, Comments on PacifiCorp's September 27, 2019 Notice of Exception to the Competitive Bidding Rules, October 25, 2019, p. 7.

61 *There is no means by which the resource can be acknowledged.*
62 The Notice of Exception was filed on September 29, 2019, before
63 the Company's Integrated Resource Plan was filed on October 18,
64 2019.

65
66 By pursuing the Project outside of all regulatory processes, the Division recommended
67 that the Company and its shareholders should bear all risks pertaining to the Project. The
68 regulatory processes were put in place to protect ratepayers who have no choice or
69 decision in a utility's actions, especially when the utility behaves as an unregulated
70 monopolist.

71 Next, because the Company excluded the Project from the Company's IRPs and
72 competitive procurement processes, I determined that we cannot know if the Project is
73 the least-cost, least-risk option. We cannot know if the Company's compressed schedule
74 to purchase a time-sensitive wind plant in Montana that benefits Vitesse's desire to go
75 "green" in Oregon is the best option for Utah ratepayers, who will be paying for the
76 Project 20 years after the federal production tax credits (PTCs) expire and for the five
77 years after the Schedule 272 REC contract expires. The only way the Commission
78 should evaluate this resource is if the full risk of any net costs associated with the Project
79 rests with PacifiCorp and not with Utah ratepayers.

80 In my testimony, I identified specific foreseeable risks that a prudent utility would
81 have known and planned for and put forth the possibility that the Project could be
82 approved if sufficient risk mitigation measures were put in place.

83 Finally, with respect to Oregon's Schedule 272 investigation as described in this
84 docket, I stated I would continue to monitor this matter during the pendency of this case.

85 **REPLY TO PARTIES' COMMENTS**

86 **Q. Before you put forth the Division's completed analysis in this case, do you wish to**
87 **reply to Parties' comments related to your Direct Testimony?**

88 A. Yes. I prefer to address these comments first, before I proceed with the Division's
89 comprehensive analysis of the prudence of the Project in the Division's surrebuttal filing.

90 **Q. Please address Mr. Brian Dickman's rebuttal comments as it pertains to your**
91 **testimony.**

92 A. As previously mentioned, Mr. Dickman provided testimony on behalf of Stadion, a
93 subsidiary of Facebook, Inc. (Facebook"). His rebuttal testimony responds to issues
94 related to the contract between PacifiCorp and Vitesse LLC ("Vitesse"), a Facebook
95 subsidiary in Oregon, pursuant to Oregon Schedule 272 Agreement to purchase the
96 renewable energy attributes of the Project.

97 Mr. Dickman correctly points out when I prepared my direct testimony filed on
98 September 2, 2020 in Utah, I did not refer to the OPUC staff "Prehearing Brief" in the
99 Oregon GRC that was filed after 5:00 p.m. on September 2, 2020. However, I was and
100 still am very aware that the Schedule 272 Agreement is an ongoing issue in the Oregon
101 GRC, as I have since read the Company's September 28, 2020 Opening Brief, OPUC
102 Staff's October 12, 2020 Opening Brief, Vitesse's October 12, 2020 Opening Brief, and
103 PacifiCorp's October 19, 2020 Closing Brief.

104 Mr. Dickman, in his rebuttal testimony filed in Utah’s GRC, provides a thorough
105 background and description of a VRET,⁴ which is Oregon’s name for a “green tariff.”
106 Mr. Dickman suggests that Schedule 272 issues in the Oregon GRC are not relevant to
107 Utah.⁵

108 I agree with Mr. Dickman that Schedule 272 issues in the Oregon GRC are not
109 relevant to Utah’s general rate case. The Division’s interest in following the
110 developments in the Schedule 272 Agreement surround the conditions that were designed
111 to protect non-participating cost-of-service customers in the VRET program. More
112 specifically, the Oregon Commission outlined nine conditions a utility must consider
113 while drafting a VRET proposal.⁶ Some of these conditions include the following: (a)
114 all direct and indirect costs and risks are borne by the participating VRET customers,
115 shareholders of the utility or third-party developers; and (b) all VRET offerings must be
116 made publicly available and subject to review by the Commission to ensure they are fair,
117 just, and reasonable. As Utah is approaching a settlement stipulation in its Schedule 34
118 tariff, I was particularly interested in conditions designed to protect non-participating
119 cost-of-service customers. The Division takes no position and has no basis to make any
120 recommendations with respect to Schedule 272 Agreements in Oregon. The Division
121 agrees with Mr. Dickman wholeheartedly on this issue.

⁴Rebuttal Testimony of Brian Dickman, pp. 6-12.

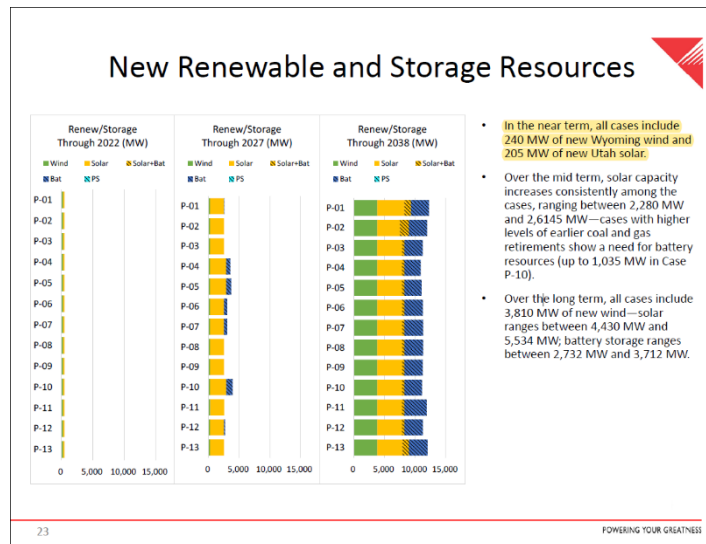
⁵ Id., p. 12, lines 214-220.

⁶ Id., p. 9, lines 160-162.

122 Q. Do you wish to respond to any of Mr. Link’s replies regarding whether the Pryor
123 Mountain wind project was or was not included in the Company’s 2019 IRP?

124 A. Yes. As a practical matter and what may also be a matter of semantics, Mr. Link claims
125 that the Company communicated, at a May 2019 public input meeting that there remained
126 limited opportunities to acquire wind resources that would not require significant
127 incremental transmission upgrades and that could still come online by the end of 2020 to
128 qualify for the 100 percent PTC and the Company may procure this type of resource
129 outside of a competitive solicitation process.⁷

130 I do recall that discussion from 18 months ago. In fact, I looked at the May 20-21,
131 2019 IRP Public Input meeting and found the following bullet point on Slide 23 of 58.
132 There was no mention of Montana wind, but the Company states that all cases include
133 240 MW of Wyoming wind. Here is the slide from that presentation:⁸



⁷ Rebuttal Testimony of Rick T. Link, pp 9-10, lines 190-203.

⁸ PacifiCorp’s 2019 IRP Public Input Meeting, May 20-21, 2019, p. 23.

142 The Oregon PUC Staff did not recognize the Project in the Company’s 2019 IRP either.

143 See below:

144

145 **Q. Did PacifiCorp include the Pryor Mountain project in its**
146 **PacifiCorp’s 2019 IRP as a future resource?**

147

148 A. No. PacifiCorp’s 2019 IRP, filed on October 18, 2019 in Docket
149 No. LC 70, did not mention the Pryor Mountain project nor did
150 Staff’s Final Report, filed April 17, 2020 in the same proceeding,
151 mention the Pryor Mountain project. Staff filed comments
152 regarding PacifiCorp’s September 27, 2019 filing on October 25,
153 2019 in Docket No. LC 70. These two filings in Docket No. LC
154 70—PacifiCorp’s September 27, 2019 filing of its Notice of
155 Exception to the Competitive Bidding Rules and Staff’s comments
156 regarding that filing—represent the only filings in which the Pryor
157 Mountain project has been discussed prior to PacifiCorp’s filing
158 for rate recovery in the proceeding at hand. As noted in Staff’s
159 Comments and as demonstrated by the dates of PacifiCorp’s
160 actions Staff lists above, PacifiCorp did not seek a waiver of the
161 competitive bidding rules prior to taking its initial actions to
162 acquire the Pryor Mountain project.⁹

163

164 Furthermore, the Company’s own policy witness in its Oregon general rate case docket
165 UE 374 clearly recognized that the Project was not included in the Company’s 2019 IRP
166 as he states below (*italics added*):

167 Further, while the Pryor Mountain Wind Project *was not* included
168 in the Company’s 2019 IRP, on September 27, 2019, the Company
169 did file a Notice of Exception with a report explaining the relevant
170 circumstances leading to the acquisition of the resource and the
171 value it provides to customers.¹⁰

172

⁹Oregon Docket No. UE 374, OPUC Opening Testimony, June 4, 2020, Staff/800/Storm/43, lines 1-4. “As noted in Staff’s Comments and as demonstrated by the dates of PacifiCorp’s actions Staff lists above, PacifiCorp did not seek a waiver of the competitive bidding rules prior to taking its initial actions to acquire the Pryor Mountain project.”

¹⁰Docket No. UE 374, PacifiCorp Reply Testimony and Exhibits, June 25, 2020. PAC/2000 Wilding, p. 25, lines 8-11.

173 Finally, I performed a global search of the Company’s 2019 IRP in Docket No. 19-035-
174 02 and found one reference to Pryor Mountain in the following Table 5.4:¹¹

PACIFICORP – 2019 IRP CHAPTER 5 – LOAD AND RESOURCE BALANCE

Table 5.4 – Owned Wind Resources

Utility-Owned Wind Projects	State	Capacity (MW)
Footee Creek I *	WY	32
Leaning Juniper	OR	101
Goodnoe Hills East Wind	WA	94
Marengo	WA	140
Marengo II	WA	70
Glenrock Wind I	WY	99
Glenrock Wind III	WY	39
Rolling Hills Wind	WY	99
Seven Mile Hill Wind	WY	99
Seven Mile Hill Wind II	WY	20
High Plains	WY	99
McFadden Ridge I	WY	29
Dunlap I	WY	111
Cedar Springs II***	WY	200
Ekola Flats ***	WY	250
TB Flats ***	WY	500
TOTAL – Owned Wind		2,222

* Net total capacity for Footee Creek I is 40 MW.
 ** Wind facility not part of EV 2020. In service December 31, 2020.
 *** EV 2020 in service by December 31, 2020.

PRUDENCE DETERMINATION

184 **Q. You previously stated that the Company’s decision to acquire the Project was not**
185 **prudent. Will you please explain how you arrived at this conclusion?**

186 **A.** Yes. I carefully evaluated this Project to determine whether there is a high probability
187 that customers will be better off with the Project than without it. I asked whether the
188 Company used a reasonable decision making process to arrive at the course of action to
189 procure the Project, and given the facts as they were or should have been known at the
190 time, responded in a reasonable manner. This Company’s decision is/was not a decision
191 to be taken lightly or hurriedly and should be weighed against the enormity of the Project

¹¹ PacifiCorp’s 2019 IRP, p. 100.

192 costs and risks. When the stakes are high, approaching [REDACTED]—someone
193 else's dollars—the required level of care is high.¹²

194 The Division's view of this evaluation is not to punish the Company for acting
195 without preapproval, but rather to fairly and objectively evaluate whether the project
196 decisions were prudent and whether it is just and reasonable to include the project in
197 customer rates.

198 Prudence requires carefulness, precaution, attentiveness, and good
199 judgment. . . . It requires sagacity or shrewdness in management of affairs;
200 skill or good judgment in the use of resources; and a thorough, complete,
201 and accurate evaluation of alternatives.¹³

202
203 Prudence analysis asks "whether the process leading to the
204 decision was a logical one" A commission's judgment about whether
205 a utility acted reasonably, and about whether its decision-making process
206 was appropriate, must take into account the consequences of error.¹⁴
207

208 I have focused on whether the Company used a reasonable decision making process to
209 arrive at a course of action and, given the facts as they were or should have been known
210 at the time, responded in a reasonable matter.

211 **Q. Will you please put forth the facts that you have discovered in your further analysis**
212 **of this case, based on the additional discovery available and rebuttal positions by the**
213 **Parties?**

214 A. Yes. I will enumerate the facts that I have deemed relevant in this proceeding.

¹² See *Baltimore Gas & Elec. Co.*, Case No. 8520/8520A, 1989 Md. PSC LEXIS 85, at *6-7, *24 (Md. Pub. Serv. Comm. 1989).

¹³ See *Business & Professional People for the Pub. Interest v. Commerce Comm.*, 665 N.E.2d 553, 556, 558 (1996).

¹⁴ See *Baltimore Gas & Elec. Co.*, Case No. 8520/8520A, 1989 Md. PSC LEXIS 85, at *6-7, *24 (Md. Pub. Serv. Comm. 1989).

- 215 (1) The timeline was compressed,¹⁵ or better to say hurried.
- 216 (2) The process from initial discussions and negotiation to final terms of the REC
217 purchase took place in under six months.¹⁶
- 218 (3) The Company testifies that it first became interested in the Project in October
219 2018, although in DPU data request #6.1-10, the Company states that it originally
220 evaluated the project for purchase in 2016 from EverPower Wind Holdings, Inc.¹⁷
- 221 (4) The Company purchased a partially-developed wind project from Innogy
222 Renewables US, LLC (Innogy) in May 2019. The [REDACTED] for the initial
223 purchase was unbudgeted and was not a part of the [REDACTED]
224 [REDACTED]
- 225 (5) The Company executed a contract with Vitesse on June 27, 2019, for the purchase
226 of all RECs generated by the Project under the Company's Oregon Schedule 272
227 Agreement.¹⁹
- 228 (6) By September 30, 2019, the Company had completed the final terms on all WTG
229 equipment and on the engineering, procurement, and construction contractor
230 (EPC).²⁰
- 231 (7) The total Project costs as of June 21, 2019 were approximately [REDACTED]
232 [REDACTED]

¹⁵ Direct Testimony of Robert Van Engelenhoven, May 2020, p. 3, lines 66.

¹⁶ Id., p. 4, lines 69-73.

¹⁷ Company's confidential response to DPU #6.1-10, August 7, 2020, p. 5.

¹⁸ Company's confidential response to DPU #18.2, confidential attachment DPU 18.2, October 6, 2020.

¹⁹ Direct Testimony of Joelle R. Steward, p.12, lines 236-245; p. 13 lines 254-258.

²⁰ Direct Testimony of Robert Van Engelenhoven, May 2020, p. 4, lines 69-73.

²¹ Company's confidential response to DPU #6.1-10, confidential attachment DPU 6.1-10, August 7, 2020, p. 3.

233 (8) The Company did not seek a waiver of the competitive bidding rules made
234 available to the utility in its Oregon jurisdiction prior to taking its initial actions to
235 acquire the Project.²²

236 (9) The Company knew very well at the time it made the decision to acquire the
237 Project that the market was unable to provide enough wind turbine equipment to
238 fully deliver the nominal 240 MW project in the timeframe available, due to
239 market pressures competing for 100 percent PTC projects. The Company also
240 knew that others were racing to compete for the equipment, the turbine suppliers,
241 the Balance of Plant (BOP) construction workers, and securing operating and
242 maintenance contracts. The Company's [REDACTED]
243 states the following (bold added):

244 [REDACTED]
245 [REDACTED]
246 [REDACTED]
247 [REDACTED]
248 [REDACTED]
249 [REDACTED]
250 [REDACTED]
251 [REDACTED]

252 The Company identifies the BHER affiliate transaction costs as approximately
253 [REDACTED]

254 (10) In the project evaluation, the Company did not consider any alternatives to the
255 Project.²⁴

²²Docket No. UE 374, June 4, 2020, Staff/800, Storm, p. 42, lines 11-21; p. 43, lines 1-4.
²³ Company’s confidential response to DPU #6.1-10, confidential attachment DPU 6.1-10, August 7, 2020, p. 11.
²⁴ Id.

256 (11) The Company did not include any [REDACTED]

257 [REDACTED]

258 (12) The Project benefits consist primarily of the PTCs that will be passed through to
259 customers for the first ten years of operation of the wind plant, assuming the full
260 100 percent PTC benefit is realized. For the remaining 20 years of the Project,
261 future ratepayers will be responsible for the operating and maintenance costs of
262 the 114 wind turbine generators and will not receive the PTC benefits that are
263 front-loaded.

264 (13) Future ratepayers will also be responsible for maintenance and outage repairs of
265 the transmission facilities associated with the Project. These costs will accrue for
266 the next 62 years until the transmission assets are fully depreciated, or in year
267 2083.

268 (14) The Project is only economic as long it generates the sufficient RECs it will sell
269 to Vitesse per the Vitesse contract. In response to the Division's discovery
270 requests, the Company explained that [REDACTED]

271 [REDACTED]

272 [REDACTED]

²⁵ Company's confidential response to DPU #18.2, confidential attachment DPU 18.2, October 6, 2020, p. 11.

²⁶ Confidential Response to DPU #18.5.

273 (15) As a highly-confidential agreement, the contract terms and pricing of the REC
274 sales are not transparent to the remaining cost of service ratepayers,²⁷ who are left
275 paying for the Project for the full 30 years of its depreciable life.

276 (16) [REDACTED]
277 [REDACTED]

278 (17) The Company identifies the WTG delivery as a Project risk that will be mitigated
279 by a guaranteed WTG delivery dates with associated delay damage charges.²⁹

280 (18) The Company describes the critical path schedule for the WTGs to be
281 commissioned.³⁰ In order to meet the strict IRS deadlines, the Company intends
282 to pre-commission each WTG due to transmission constraints competing with the
283 Company's commissioning of its Energy Vision 2020 new wind projects.
284 Performing one-by-one WTG commissioning will be an additional cost to the
285 Project—not yet provided or accounted for in total Project costs.³¹

286 (19) The Company identified the number of excessive wind days when WTGs cannot
287 be erected as another risk associated with the expeditious schedule set forth by the
288 Company.³²

289 (20) Another Project risk is the availability of transmission service generally. The
290 Company's mitigation plan is to schedule the number of WTGs to be

²⁷ PacifiCorp's Notice of Exception under OAR 860-089-0100, September 27, 2019, page 4

²⁸ Confidential Response to DPU #18.5.

²⁹ Company's confidential response to DPU #6.1-10, confidential attachment DPU 6.1-10, August 7, 2020, p. 10.

³⁰ Id.

³¹ Id.

³² Id.at p. 11.

291 commissioned ahead of time and then right after being commissioned, the
292 Company will turn them off to complete the commissioning of the next turbines.
293 The proposal for this service will result in additional incremental costs that have
294 not been included in Project costs. The approach appears to be an inefficient, but
295 desperate attempt to get the 114 WTGs commissioned just in time.³³ Also, the
296 WTGs will not be used and useful without adequate transmission service
297 available.

298 **Q. What is the Division’s finding with respect to the prudence of the Company’s**
299 **decision to procure the Project?**

300 **A.** I have focused on whether the Company used a reasonable decision making process to
301 arrive at a course of action and, given the facts as they were, or should have been known
302 at the time, responded in a reasonable matter. When the stakes are approaching a [REDACTED]
303 [REDACTED]—someone else’s dollars—the required level of care is high. The Division
304 believes the Company acted hastily, with poor planning, tight and unrealistic deadlines,
305 within a very compressed timeframe that the Company, with its experience constructing
306 wind farms should have known at the time was unreasonable.

307 The Company cut many corners by not availing itself the opportunity to provide
308 the Oregon PUC with its notice of competitive procurement of a resource. And while not
309 required to do so, the Company avoided almost all regulatory proceedings up until this
310 time when the Company wants the Project’s costs to go into rates. By circumventing the

³³ Id.

311 planning and procurement processes, the Company assumes a higher level of risk than its
312 customers, who had no choice in the Company’s decision to pursue the Project. The
313 Company did not even attempt to evaluate any alternatives to the Project, or account for
314 any amount of contingencies in its capital plan. In fact, the Company’s initial decision to
315 spend ██████████ to purchase the project from Innology, was unbudgeted and was not
316 contained in the Company’s 2019 10-year Business Plan. These actions do not portray a
317 careful, attentive, and sagacious utility manager who practices good judgment in the use
318 of resources.

319 The Division understands that prudence evaluates whether a utility has behaved
320 reasonably, based on industry norms, using all the available information and tools
321 objectively and competently that was reasonably available. Prudence requires
322 carefulness, precaution, attentiveness, good judgment, and a thorough, complete, and
323 accurate evaluation of the alternatives. Whether a utility’s decision making process is
324 reasonable, it must take into account the consequences of error.³⁴

325 The Company’s decision to pursue this resource was highly risky and capricious.
326 As an example, the Company’s plan for commissioning the WTGs prior to the expiration
327 of the PTCs meant it would back feed the power to WTGs one-by-one from power from
328 Rocky Mountain Power. After one WTG is commissioned, the Company will turn off
329 power to that WTG and move to the next WTG and repeat the same exercise again. This
330 sounds like poor planning on behalf of the utility, and the Company points out that the

³⁴See e.g., Rose, Kenneth (2004). *Electric Power: Traditional Monopoly Franchise Regulation and Rate Making*.
Oxford: Elsevier Science & Technology.

331 additional expenses to back feed this power have not been included in the [REDACTED]
 332 project costs.³⁵ This does not seem like the way a reasonable utility would plan to
 333 construct a wind project of this magnitude and scope. Further, the Division learned that
 334 the Company may energize its collector substation row by row as well, in order to meet
 335 the unrealistic deadlines to hurriedly complete the necessary project deadlines. The
 336 Company has had a lot of experience in constructing wind farms, but it is obvious that the
 337 Pryor Mountain wind project was a last minute attempt to capture one last bite at the
 338 PTCs that was not fully thought out or planned judiciously.

339 The Company has acknowledged that but for the 100 PTCs and the REC sales
 340 from Vitesse, the Project would be uneconomic. The Commission should disallow the
 341 costs for the Project and find that the Company acted hastily and without using good
 342 judgment, as it put together a last-minute plan with unrealistic milestones and deadlines
 343 and without that fully considering all of the risks attendant to the Project. This does not
 344 represent the actions of a reasonable utility manager.

345 **Q. In the event that the Commission does not accept the Division’s surrebuttal position,**
 346 **does the Division put forth an alternative proposal with respect to the Project?**

347 A. Yes. Should the Commission find the Company’s decision to purchase the Project is/was
 348 prudent, the Division proposes the following ratepayer protections: cap project costs at
 349 those originally proposed in the Company’s opening testimony, a guarantee that the
 350 Project qualifies for and receives the full 100 percent PTCs, and a guarantee of the

³⁵ Confidential Direct Testimony of Robert Van Engelenhoven, May 2020, p. 4, line 75.

351 Project's projected [REDACTED] percent expected net capacity factor as put forth in the
352 Company's proposal.³⁶

353 Similar to TB Flats II, which is behind schedule due to the Covid pandemic, the
354 Division recommends the Commission adopt the two-step phased approach to ratemaking
355 for Pryor Mountain that the Company has put forth in its rebuttal position for TB Flats II.
356 The costs of the TB Flat II project were previously approved by the Commission as part
357 of the Energy Vision 2020 projects in Docket No. 17-035-40. The same terms and
358 conditions set forth in the Commission's Order approving TB Flats II also would apply to
359 approval of the Pryor Mountain project (except for the Covid pandemic costs).

360 At this time, the Company does not know what its final costs will be for the TB
361 Flats II or Pryor Mountain Wind projects. In addition, the Company cannot for certain
362 guarantee an in-service date for either project due to the pandemic. Finally, the Company
363 is still reviewing force majeure submissions and supply chain stoppages due to the
364 pandemic and will not know for some time which, and how much of any, cost overruns
365 will be attributable to the pandemic or not.

366 The Division recommends the Company notify the Commission of the in-service,
367 commercial operation date (COD) of the TB Flats and the Pryor Mountain wind projects
368 within 30 days of when the projects are fully operational and are used and useful. Within
369 60 days of the in-service date for each project, the Division recommends the Commission
370 require the Company to file an initial reporting document that identifies any costs the

³⁶ Confidential Direct Testimony of Robert Van Engelenhoven, May 2020, p. 6, line 120.

371 Company deems are attributable to the pandemic. The report needs to contain supporting
372 documentation of why the costs were beyond the Company's control and how they are
373 Covid-related. The report also needs to identify any other project costs that are above the
374 project costs contained in each project's respective applications.

375 Finally, similar to the Company's compliance filing of the wind repowering
376 projects in Docket No. 17-035-39, once the completed punch list items have been taken
377 care of and all project costs are finalized, the Company needs to provide a compliance
378 report to the Commission within 30 days of final project completion. These reports
379 should be required for the Pryor Mountain project, for which project costs have not been
380 approved or deemed prudent, as well as for the TB Flats project costs, as previously
381 approved by the Commission.

382 The Division hopes that the Company is incentivized to operate as a regulated
383 monopolist rather than a competitive enterprise. To produce pressures comparable to
384 competition, regulation must reward competitive-level performance with competitive-
385 level profit and penalize suboptimal performance by disallowing excess costs.³⁷

386 For "[i]f a competitive enterprise tried to impose on its customers costs
387 from imprudent actions, the customers could take their business to a more
388 efficient provider. A utility's ratepayers have no such choice."³⁸
389 Knowing this inevitable consequence, companies in competitive markets strive
390 toward prudence. They have no alternative to efficiency.³⁹

391

³⁷ See, e.g., *Appeal of Conservation Law Found., Inc.* 507 A.2d 652, 673 (N.H. 1986) (describing the prudence standard as "essentially applying an analogue of the common law negligence standard").

³⁸ *Midwestern Gas Transmission Co v. E. Tenn. Natural Gas Co.*, 36 FPC 61, 70 (1966), 36 FPC at 70.

³⁹ *Id.*

392

CONCLUSION AND RECOMMENDATIONS

393 **Q. Will you please summarize your conclusions and recommendations to the**
394 **Commission in surrebuttal testimony?**

395 A. Yes. The Division has reviewed in depth the Company's testimonies and discovery
396 documents in this case and has determined that the Company's decision to pursue the
397 Pryor Mountain wind project is not prudent. Here, a prudence determination must be
398 made. A reasonable utility, knowing all the information it had available to it at the time
399 the resource decision was made, would have at that time chosen to pursue the resource
400 acquisition.

401 The Division recommends the Commission find the Company's decision
402 imprudent and recommends the entirety of the Project costs be disallowed in this case.
403 The Division also put forth an alternatives cost recovery should the Commission decide
404 to proceed in that direction.

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

406 A. Yes.