

**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

In the Matter of Rocky Mountain  
Power's Application for Alternative  
Cost Recovery for Major Plant  
Additions of the Pryor Mountain and  
TB Flats Wind Projects

DOCKET NO. 21-035-42

**DIRECT TESTIMONY**

**AND EXHIBITS**

**OF**

**KEVIN C. HIGGINS**

**On Behalf of**

**Utah Association of Energy Users**

**October 6, 2021**

**REDACTED**

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3           **I.       INTRODUCTION AND SUMMARY**

4           **Q.       PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5           A.       My name is Kevin C. Higgins. My business address is 111 East Broadway, Suite 1200,  
6           Salt Lake City, Utah, 84111.

7           **Q.       BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8           A.       I am a Principal in the firm of Energy Strategies, LLC, a private consulting firm that  
9           specializes in economic and policy analysis applicable to energy production,  
10          transportation, and consumption.

11          **Q.       ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

12          A.       My testimony is being sponsored by the Utah Association of Energy Users (“UAE”).

13          **Q.       PLEASE SUMMARIZE YOUR QUALIFICATIONS.**

14          A.       My academic background is in economics, and I have completed all coursework and field  
15          examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have  
16          served on the adjunct faculties of both the University of Utah and Westminster College,  
17          where I taught undergraduate and graduate courses in economics. I joined Energy  
18          Strategies in 1995, where I assist private and public sector clients in the areas of energy-  
19          related economic and policy analysis, including evaluation of electric and gas utility rate  
20          matters.

21                   Prior to joining Energy Strategies, I held policy positions in state and local  
22          government. From 1983 to 1990, I was economist, then assistant director, for the Utah  
23          Energy Office, where I helped develop and implement state energy policy. From 1991 to  
24          1994, I was chief of staff to the chairman of the Salt Lake County Commission, where I

25 was responsible for development and implementation of a broad spectrum of public  
26 policy at the local government level.

27 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC**  
28 **SERVICE COMMISSION (“PSC” OR “THE COMMISSION”)?**

29 A. Yes. Since 1984, I have testified in forty-five dockets before the Commission on  
30 electricity and natural gas matters.

31 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY OTHER STATE**  
32 **UTILITY REGULATORY COMMISSIONS?**

33 A. In addition to these Utah proceedings, I have testified in approximately 220 other  
34 proceedings on the subjects of utility rates and regulatory policy before state utility  
35 regulators in Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana,  
36 Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico,  
37 New York, North Carolina, Ohio, Oklahoma, Oregon, North Carolina, Pennsylvania,  
38 South Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming. I have also  
39 filed affidavits in proceedings before the Federal Energy Regulatory Commission and  
40 prepared expert reports in state and federal court proceedings involving utility matters.

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

42 A. My testimony addresses the request by Rocky Mountain Power (“RMP” or “the  
43 Company”) for approval of its application for a Major Plant Addition (“MPA”) base  
44 revenue change associated with its TB Flats and Pryor Mountain wind projects.

45 **Q. PLEASE SUMMARIZE YOUR PRIMARY CONCLUSIONS AND**  
46 **RECOMMENDATIONS.**

47 A. I recommend that the Company's request be rejected because its application does not  
48 reasonably meet the criteria for approval of an MPA under Utah Code section 54-7-13.4.  
49 As a threshold matter, UAE opposes any designation of the TB Flats and Pryor Mountain  
50 wind projects as plant *additions* under the statute, as both of these facilities are already  
51 included in rate base in their *entirety*, notwithstanding the fact that the measurement of  
52 plant-in-service differs depending on whether it is measured on an average-of-2021 basis  
53 or an average-of-2022 basis. Logically, the MPA designation should be applicable only  
54 to plant that is not already included in rate base. Moreover, to be considered an MPA  
55 under the statute, the investment must exceed one percent of the Company's rate base  
56 allocated to Utah, as determined in the Company's most recent rate case. As I will  
57 demonstrate below, the incremental measurement of plant-in-service for the TB Flats and  
58 Pryor Mountain projects relative to what is already included in rate base fails to meet the  
59 one percent threshold.

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61 **II. RMP'S REQUEST FOR APPROVAL OF A MAJOR PLANT ADDITION**

62 **Q. PLEASE DESCRIBE RMP'S PROPOSAL.**

63 A. RMP is requesting approval of a change in revenue requirement related to its investment  
64 in the TB Flats and Pryor Mountain wind projects beyond what has already been  
65 approved by the Commission in RMP's general rate case, Docket No. 20-035-04. Both  
66 of these projects were included in rate base and revenue requirement determined in that  
67 most recent general rate case. In that case, the approved rate base for these two projects

68 was measured on an average-of-period basis for the calendar year 2021, consistent with  
69 the approved test period in that case. Similarly, the expense and benefits from these two  
70 projects were measured on a pro forma basis (i.e., matching the calendar year 2021)  
71 rather than on an end-of-period annualized basis. In its MPA filing, RMP is requesting  
72 revenue requirement approval for these two projects measured on an average-of-year  
73 2022 basis. In short, RMP is seeking recovery for the difference between the inclusion of  
74 these plants in rate base on an average-of-period (2021) basis versus an average-of-period  
75 (2022) basis.<sup>1</sup>

76 **Q. WHAT IS THE REVENUE REQUIREMENT CHANGE REQUESTED BY RMP?**

77 A. RMP is seeking a reduction in Utah base revenue of \$4,142,796. This reduction in base  
78 revenue consists of three components, as shown in Table KCH-1, below.

79 **Table KCH-1**  
80 **Utah Base Revenue Requirement Change Proposed by RMP<sup>2</sup>**

81	<u>Revenue Requirement Component</u>	<u>Base Revenue Change</u>
83	Plant Revenue Requirement	\$ 6,733,826
84	Production Tax Credit Benefits	\$(6,792,442)
85	Net Power Cost Savings	\$(4,084,179)
86		
87	TOTAL	\$(4,142,796)

88 As shown in the table, the base revenue reduction is caused by including incremental

89 Production Tax Credit (“PTC”) and incremental net power cost benefits in base rates.

90 However, 100% of these incremental benefits would flow to customers anyway through

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<sup>1</sup> In its Phase 1 rebuttal testimony filed in Docket No. 20-035-04, RMP proposed an average test period ending June 30, 2022 for these two projects, but for costs only. *See, e.g.*, Docket No. 20-035-04, Rebuttal Testimony of Steven R. McDougal at lines 14-92. The Commission rejected the Company’s proposal. *See* Docket No. 20-035-04, Order (Dec. 30, 2020) at 45 (“Accordingly, we deny RMP’s request to implement a two-step increase and to recover the Delayed Plant in reliance on projections beyond the approved Test Year.”).

<sup>2</sup> Source: RMP Exhibit RMM-1, p. 2.

91 the Energy Balancing Account (“EBA”) if the MPA application was not made or was  
92 rejected by the Commission.<sup>3</sup> Thus, if the MPA were to be approved, the actual net  
93 impact to customers would be an increase to plant revenue requirement of \$6,733,826 per  
94 year. That is, the MPA filing represents a net rate increase to Utah customers of around  
95 \$6.7 million, not a net reduction of \$4.1 million.

96 **Q. ON WHAT BASIS DOES RMP ASSERT THAT THE TB FLATS AND PRYOR**  
97 **MOUNTAIN PROJECTS QUALIFY AS MPAs?**

98 A. RMP states that one percent of the Company’s approved rate base in the 2020 general  
99 rate case is \$75.6 million on a Utah jurisdictional basis. RMP further states that pursuant  
100 to the jurisdictional allocation from the MSP 2020 Protocol, \$183 million of its  
101 investment in the Pryor Mountain project and \$281 million of its investment in the TB  
102 Flats project will be allocated to Utah. RMP asserts that each project qualifies as an  
103 MPA because the capital investment for each exceeds \$75.6 million, and thereby meets  
104 the statutory threshold requiring that an MPA exceed one percent of Utah rate base, as  
105 determined in the most recent general rate case.

106 **Q. WHAT IS YOUR ASSESSMENT OF RMP’S MPA REQUEST?**

107 A. I recommend that the Commission reject RMP’s request for additional cost recovery for  
108 the TB Flats and Pryor Mountain projects through its MPA application. RMP’s premise  
109 that these projects should be afforded MPA status is deeply flawed. TB Flats and Pryor  
110 Mountain qualify neither as *additions* nor as *major* under the statute. The legal

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<sup>3</sup> In RMP’s Response to DPU Data Request 4.10, the Company contends that if its MPA proposal is not adopted, the Company will make an adjustment in future EBA proceedings to remove a pro rata share of PTC benefits from the EBA. However, such an adjustment would be highly problematic as it would represent an *ad hoc* variance from the approved EBA mechanism which would be strongly opposed by UAE. A copy of RMP’s Response to DPU Data Request 4.10 is attached hereto as UAE Exhibit 1.2.

111 arguments in support of UAE's position will be presented by UAE counsel. My  
112 testimony will offer the policy basis for rejecting the Company's proposal and the  
113 evidentiary support for UAE's legal arguments.

114 **Q. IN A RATEMAKING CONTEXT, CAN THE TB FLATS AND PRYOR**  
115 **MOUNTAIN PROJECTS REASONABLY BE CONSIDERED TO BE PLANT**  
116 **ADDITIONS?**

117 A. No. Both investments are already included in rate base in their entirety, as they were  
118 approved by the Commission and included in rates in its Order issued in Docket No. 20-  
119 035-04. There is no new plant being *added* by RMP associated with these two projects  
120 that is not already in rate base.

121 **Q. IF THESE TWO PROJECTS ARE ALREADY INCLUDED IN RATE BASE IN**  
122 **THEIR ENTIRETY, HOW COULD MPA APPROVAL RESULT IN AN**  
123 **INCREASE IN THE PLANT REVENUE REQUIREMENT?**

124 A. The increase in plant revenue requirement stems from the difference between measuring  
125 the plant-in-service on an average-of-2021 basis, as was approved by the Commission in  
126 the rate case, versus average-of-2022 basis, as requested by RMP in its MPA application.  
127 Plant-in-service measured on an average-of-period basis is determined by calculating the  
128 average plant balance over the 13 months corresponding to the test period. For plant that  
129 comes into service *during* the test period (i.e., after January 1), its average monthly  
130 balance will necessarily be lower than its final balance at the end of the test period  
131 because it would not have been in service for the entire year. Similarly, the average plant  
132 balance will necessarily be lower during the year the plant comes into service than its

133 average balance in the subsequent year. That is the case for both TB Flats and Pryor  
134 Mountain.

135 As noted in the errata to RMP's application, for TB Flats, approximately 204.3  
136 MW of nameplate capacity was in-service at the start of 2021, while the remaining 303  
137 MW of capacity was placed into service by July 26, 2021. In the general rate case, it was  
138 anticipated that 309 MW of TB Flats capacity would be in service at the start of 2021 and  
139 that the remainder of the project would be fully in service by June 2021. The average  
140 rate base for TB Flats was calculated based on these projections; thus, the entire amount  
141 of the TB Flats plant-in-service (as projected by RMP in that case) was included in rate  
142 base starting in June 2021.

143 In the case of Pryor Mountain, only 20 MW of nameplate capacity was in-service  
144 at the start of 2021, whereas the remaining 220 MW of capacity was placed into service  
145 as of April 1, 2021. In the general rate case, it was anticipated that 160 MW of Pryor  
146 Mountain capacity would be in service at the start of 2021 and that the remainder of the  
147 project would be fully in service by July 2021. The average rate base for Pryor Mountain  
148 was calculated based on these projections and the entire amount of Pryor Mountain plant-  
149 in-service (as projected by RMP in that case) was included in rate base starting in July  
150 2021.

151 Because the entire amounts of both TB Flats and Pryor Mountain plant-in-service  
152 were included in rate base by July of 2021, it is unreasonable to construe either of these  
153 projects in August 2021 (when RMP filed its MPA application) as plant *additions* in a  
154 ratemaking, or even a common sense, context.

155           Despite the fact that the entire amount of plant-in-service for these projects is  
156 already included in rate base, RMP requests an increased plant revenue requirement  
157 associated with the projects because the plant-in-service for each project is higher if  
158 measured on an average-of-2022 basis than it was when measured in the test period in the  
159 most recent rate case. TB Flats plant-in-service measured on an average-of-2021 basis as  
160 approved in the rate case is [REDACTED] million and the average-of-2022 amount is [REDACTED]  
161 million. Similarly, the Pryor Mountain plant-in-service measured on an average-of-2021  
162 basis as approved in the rate case is [REDACTED] million and the average-of-2022 amount is  
163 [REDACTED] million.<sup>4</sup>

164 **Q. IN USING AN AVERAGE-OF-2022 TEST PERIOD FOR THE MPA, IS RMP**  
165 **REFLECTING NEW PLANT EXPECTED TO BE ADDED IN 2022?**

166 A. No. All of the TB Flats and Pryor Mountain plant that is the subject of the MPA request  
167 was placed into service in 2021. RMP simply uses average-of-2022 in its MPA filing as  
168 a measurement period for these plants as an alternative to the test period approved in  
169 Docket No. 20-035-04. In Confidential Exhibit UAE 1.1, I show a comparison of the TB  
170 Flats and Pryor Mountain rate base, as measured both in the general rate case and RMP's  
171 MPA application.

172 **Q. IF, DUE TO THE INCREASE IN REVENUE REQUIREMENT ASSOCIATED**  
173 **WITH CHANGING THE MEASUREMENT FRAMEWORK FROM AVERAGE-**  
174 **OF-2021 TO END-OF-2021, THE COMMISSION WERE TO CONSTRUE THESE**

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<sup>4</sup> See Table KCH-2, below. RMP designates the investment cost of the TB Flats and Pryor Mountain projects as confidential. However, I fail to understand why, at this time, with the projects fully in service, their cost should be kept secret from the public that is paying for it.

175 **PLANTS AS “ADDITIONS,” WOULD THEY QUALIFY AS MAJOR PLANT**  
176 **ADDITIONS AS YOU UNDERSTAND THE STATUTE?**

177 A. No. As I discussed above, to be considered an MPA under the statute, the investment  
178 must exceed one percent of the Company’s rate base allocated to Utah, as determined in  
179 the Company’s most recent rate case. RMP asserts that these investments qualify as  
180 MPAs because their respective total investment costs exceed the one percent threshold.  
181 However, in making this claim, the Company ignores the fact that these investments are  
182 already in rate base and are already included in the RMP’s approved revenue  
183 requirement. Even if these plants are construed to be “additions,” (and they should not  
184 be, as discussed above) then, in a ratemaking context, they could logically only be  
185 considered to be “additions” on an *incremental* basis. That is, the average plant-in-  
186 service during the 2021 test period cannot be an “addition.” The only theoretical  
187 “addition” in RMP’s Application is the *change* in plant-in-service that is observed when  
188 comparing the average-of-2021 test period approved in the rate case with the average-of-  
189 2022 period that RMP now prefers.<sup>5</sup>

190 As shown in Table KCH-2, below, for TB Flats, the incremental change in the  
191 measurement of Utah-allocated plant-in-service between the rate case and the MPA  
192 application is [REDACTED] million. And for Pryor Mountain, the incremental change in the  
193 measurement of Utah-allocated plant-in-service between the rate case and the MPA  
194 application is [REDACTED] million.

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<sup>5</sup> Again, I do not believe that one can manufacture an “addition” by simply changing the measurement period for the average plant-in-service. To constitute an “addition,” new plant must be added that is not already included in revenue requirement.

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**Table KCH-2  
TB Flats and Pryor Mountain Plant-in-Service  
(Utah Allocated)<sup>6</sup>**

<u>Plant</u>	<u>2021 Average Plant (GRC)</u>	<u>2022 Average Plant (MPA)</u>	<u>Increment</u>
TB Flats	[REDACTED]	[REDACTED]	[REDACTED]
Pryor Mountain	[REDACTED]	[REDACTED]	[REDACTED]

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Since one percent of the Company’s approved Utah rate base in the 2020 general rate case is \$75.6 million, neither of these projects meet the one percent threshold required in the statute when measured the only way that makes any sense, i.e., on an incremental basis. (In fact, they do not even reach the one percent threshold on a *combined* basis.) Thus, even if these projects were construed to be “additions,” neither is *major* enough to warrant designation as an MPA, reinforcing UAE’s recommendation that the Company’s application be rejected.

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**Q. WHAT IS YOUR RESPONSE TO THE CONTENTION BY THE COMPANY THAT WITHOUT MPA APPROVAL, THESE PROJECTS WILL PROVIDE ANNUALIZED NET POWER COST AND PTC BENEFITS TO CUSTOMERS WITHOUT PROVIDING PLANT REVENUE REQUIREMENT RECOVERY THAT IS FULLY ANNUALIZED?**

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A. The flow-through of fully annualized net power cost and PTC benefits to customers (albeit delayed) from these projects will occur due to (a) the EBA and (b) the inclusion of PTCs in the EBA. The flow-through is exacerbated by the absence of a sharing mechanism in the EBA. All of these conditions were brought about by RMP’s past

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<sup>6</sup> Source: Confidential Exhibit UAE 1.1.

221 actions to reduce risk to shareholders, but in this particular instance, are causing results  
222 that the Company apparently considers to be inequitable to its shareholders.<sup>7</sup> RMP's  
223 objections notwithstanding, the Company should be expected to live with the results of  
224 the ratemaking mechanisms it successfully champions even when the results of doing so  
225 are not to its satisfaction.

226 **Q. PLEASE EXPLAIN.**

227 A. The EBA was approved by the Commission following a concerted effort by the Company  
228 in support of its adoption over the objections of customer parties such as UAE.<sup>8</sup>  
229 Moreover, the EBA mechanism initially approved by the Commission contained a 70/30  
230 sharing mechanism that split the cost (or benefits) of deviations from net power costs in  
231 base rates 70% to customers and 30% to RMP. Not satisfied with this version of the  
232 EBA, RMP successfully lobbied the Legislature to impose a 100% pass-through of net  
233 power cost deviations onto Utah customers, nullifying the sharing mechanism ordered by  
234 the Commission. Finally, in the most recent general rate case, RMP successfully argued  
235 for inclusion of PTCs in the EBA, which shifts 100% of the risk of wind production  
236 variability from shareholders to customers. But for these mechanisms and changes  
237 championed by RMP in the broader interests of its shareholders, the annualized net power  
238 cost and PTC benefits from TB Flats and Pryor Mountain that currently are not in base  
239 rates would not be passed on to customers. Further, if the 70/30 sharing mechanism were

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<sup>7</sup> Direct Testimony of Steven R. McDougal, lines 39-51.

<sup>8</sup> See Docket No. 09-035-15, Corrected Report and Order (March 3, 2011) at 26-27 (“The Division, Office, UAE, UIEC, WRA, UCE, SLCAP, Nucor and Wal-Mart all provide either testimony or argument opposing the Company’s application for approval of its proposed ECAM.”)

240 still in place, then at least a portion of the annualized net power cost and PTC benefits  
241 that are currently not in base rates would have been retained by the Company.

242 At its heart, the MPA filing is an attempt by RMP to circumvent the normal  
243 results of ratemaking when using average rate base. RMP asserts that determining the  
244 revenue requirement for TB Flats and Pryor Mountain using average rate base results in a  
245 mismatch between plant revenue requirement and the benefits from net power cost  
246 savings and PTCs that will flow to customers. But any mismatch is solely the side effect  
247 of tracker mechanisms developed and advocated by the Company in pursuit of its broader  
248 corporate objectives. Having succeeded in getting these mechanisms adopted, the  
249 Company has little cause for complaint if they sometimes result in an imperfect  
250 alignment between costs and customer benefits for a particular time period. The use of  
251 average rate base when using a projected test period is a fundamental tenet of ratemaking  
252 in Utah. This important ratemaking principle should not be undermined and subordinated  
253 to the tracker mechanisms that were adopted at the Company's behest.

254 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

255 **A.** Yes, it does.