

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Rocky Mountain Power’s Application for)	Docket No. 22-035-01
Approval of the 2022 Energy Balancing)	
Account)	Surrebuttal Testimony
)	of Philip Hayet
)	For the Office of
)	Consumer Services

REDACTED VERSION

CONFIDENTIAL INFORMATION REDACTED

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

December 5, 2022

CONFIDENTIAL Subject to Utah Public Service Commission Rule R746-1-602 and 603

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TITLE.**

3 A. My name is Philip Hayet, and I am Vice President of J. Kennedy and Associates,
4 Inc. My business address is 570 Colonia Park Drive, Suite 305, Roswell, GA,
5 30075.

6 **Q. HAVE YOU ALREADY FILED TESTIMONY IN THIS PROCEEDING?**

7 A. Yes, I filed Direct Testimony on October 21, 2022 in this proceeding on behalf of
8 the Utah Office of Consumer Services (“OCS”).

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

10 A. My testimony responds to issues discussed by PacifiCorp, d.b.a. Rocky Mountain
11 Power (“RMP” or “the Company”) witnesses, Craig Eller and Jack Painter.
12 Specifically, I address the Company’s position on the Aeolus substation failure
13 event that Mr. Eller presented, and I note a de minimis adjustment to a calculation
14 that I included in my Direct Testimony that Mr. Painter pointed out. In addition, I
15 explain the OCS’ current recommendation for a disallowance of outage costs in the
16 EBA deferral related to the Aeolus substation failure event.

17 **Q. PLEASE SUMMARIZE OCS’ CURRENT RECOMMENDATION FOR A**
18 **DISALLOWANCE OF OUTAGE COSTS RELATED TO THE AEOLUS**
19 **SUBSTATION FAILURE EVENT.**

20 A. OCS continues to recommend that the PSC disallow the costs associated with the
21 Aeolus substation failure because the Company hasn’t adequately supported the
22 costs as being prudently incurred. I discuss the specific evidence that could have

23 been provided later in this testimony, and I present an updated disallowance
24 calculation, that OCS recommends the Commission adopt.

25 **II. RESPONSE TO PACIFICORP WITNESS ELLER**

26 **Q. DOES RMP ADDRESS THE QUESTION OF THE COMPANY'S**
27 **RESPONSIBILITY WHEN COMPANY HIRED CONTRACTORS ARE**
28 **FOUND TO BE AT FAULT FOR CAUSING GENERATING UNIT**
29 **OUTAGES?**

30 A. Yes, in his Rebuttal Testimony, Company Witness Craig Eller explains his
31 understanding of prior PSC orders regarding outages caused by contractors, which
32 is that the PSC does not automatically hold the Company responsible for
33 replacement power costs associated with those outages.

34 **Q. DO YOU AGREE WITH MR. ELLER'S UNDERSTANDING?**

35 A. Yes I do. However, at the same time, this does not mean that the Commission
36 would automatically exempt the Company from having any responsibility _for
37 outages caused by contractors.

38 **Q. DID MR. ELLER CONCEDE THAT THE PSC WOULD NOT**
39 **AUTOMATICALLY EXEMPT THE COMPANY FROM ANY**
40 **RESPONSIBILITY FOR REPLACEMENT POWER COSTS WHEN AN**
41 **OUTAGE IS CAUSED BY A CONTRACTOR'S MISTAKE?**

42 A. Yes, he did. In lines 19 to 22 of his Rebuttal Testimony, Mr. Eller cited the PSC's
43 2021 EBA Order, and explained that the PSC determined that RMP may be held
44 responsible for paying replacement power costs caused by a contractor's mistake.

45 Mr. Eller explained that in making that determination, the PSC will consider
46 relevant factors including “the Company’s ‘reasonableness and due diligence’ in
47 ‘entering the contractual relationship’ along with the Company’s ‘ongoing
48 management of the contractual relationship’”¹

49 **Q. ARE THOSE TWO FACTORS THE ONLY CONSIDERATIONS THE PSC**
50 **IDENTIFIED AS IMPACTING THE DETERMINATION OF WHETHER**
51 **RMP WOULD BE HELD RESPONSIBLE FOR PAYING REPLACEMENT**
52 **POWER COSTS BASED ON AN OUTAGE CAUSED BY A**
53 **CONTRACTOR’S MISTAKE?**

54 **A.** No. On page 8 of the 2021 EBA Order, the PSC also lists “the propriety of the
55 contractor’s actions” as a consideration in determining if RMP should be found
56 responsible for a contractor’s error. The 2021 EBA Order also pointed to an earlier
57 order, the PSC’s 2019 EBA Order, as containing “the universe of relevant factors”²
58 that should be considered in determining if the Company acted prudently in the case
59 where a contractor caused an outage. In addition to mentioning “the propriety of
60 the contractor’s actions,” the 2019 EBA Order also expanded on what it meant by
61 “ongoing management of the contractual relationship”. The PSC stated that

¹ The PSC citation was to Rocky Mountain Power’s Application for Approval of the 2020 Energy Balancing Account, Docket No. 20-035-01, Order at 16 (Feb. 26, 2021), referred to as the 2021 EBA Order.

² 2021 EBA Order, p. 10.

62 included “administration, monitoring, and any necessary oversight,”³ meaning the
 63 Company is not absolved of the responsibility to administer, monitor and oversee
 64 contractors just because it hires a qualified contractor.

65 **Q. DID THE 2019 EBA ORDER PROVIDE ANY OTHER INSIGHT INTO THE**
 66 **COMPANY’S RESPONSIBILITY FOR DEMONSTRATING PRUDENCE**
 67 **OF EXPENSES RECOVERED IN THE EBA?**

68 **A.** Yes, Section B at page 2, the PSC’s Conclusions of Law section noted the following
 69 regarding the Company’s burden of proof.

70 PacifiCorp bears the burden of proof to establish, by substantial evidence,
 71 the prudence of each expense in the EBA. The degree to which other parties
 72 dispute an expense is relevant to the evaluation of the evidence provided by
 73 PacifiCorp, but no party has a burden to prove imprudence. Rather, we
 74 consider evidence suggestive of imprudence in our case-by-case analysis of
 75 whether PacifiCorp has met its burden to establish prudence

76 **Q. HAS RMP CARRIED ITS BURDEN OF PROOF THAT IT ACTED**
 77 **PRUDENTLY IN MANAGING THE CONTRACTUAL RELATIONSHIP**
 78 **WITH ITS CONTRACTORS [REDACTED]**
 79 **(“THE CONTRACTORS”)⁴?**

80 **A.** No. Despite the inclusion of a new report produced by [REDACTED]
 81 [REDACTED] which Mr. Eller attached to his Rebuttal Testimony as Confidential Exhibit
 82 RMP___(CME-1R) (referred to as the “Expert Report”), there are still many

³ Application of Rocky Mountain Power to Increase the Deferred EBA Rate through the Energy Balancing Account Mechanism, Docket No. 18-035-01, Order at 3 (March 12, 2019), referred to as the 2019 EBA Order.

⁴ [REDACTED]
 [REDACTED]

83 unanswerd questions, which has led me to conclude that RMP has provided
84 insufficient evidence to carry the heavy burden of proof that rests with the utility in
85 regulatory proceedings.

86 **Q. HAS RMP PROVIDED ANY EVIDENCE RELATED TO THE PROPRIETY**
87 **OF THE CONTRACTOR’S ACTIONS IN USING** [REDACTED]

88 [REDACTED]
89 [REDACTED]
90 [REDACTED]

91 **A.** No. RMP did not acknowledge the propriety of the contractor’s actions as a
92 consideration in evaluating whether the Company should be held responsible for a
93 contractor’s mistake, and has not provided any analysis or evidence regarding this
94 factor. RMP simply provided bald assertions that it acted prudently in managing
95 the contractors and relying on the contractor’s expertise. RMP could have but did
96 not provide any information about [REDACTED]

97 [REDACTED]
98 [REDACTED]
99 [REDACTED]
100 [REDACTED]
101 [REDACTED]
102 [REDACTED]
103 [REDACTED]
104 [REDACTED]

105 [REDACTED]

106 [REDACTED]

107 [REDACTED]

108 [REDACTED]

109 [REDACTED]

110 [REDACTED]

111 **Q. WHAT DID THE COMPANY STATE THAT [REDACTED] DID IN**
112 **PROVIDING ENGINEERING SUPPORT FOR THE COMPANY?**

113 **A.** Mr. Eller stated that [REDACTED]

114 [REDACTED]

115 [REDACTED]

116 [REDACTED]

117 [REDACTED]

118 [REDACTED]

119 **Q. DID THE COMPANY STATE HOW WITH THE [REDACTED]**

120 [REDACTED]

121 [REDACTED] **PERFORMED, THE CATASTROPHIC**

122 **EVENT COULD HAVE OCCURRED?**

⁵ Rebuttal Testimony of Craig Eller, p. 2, l. 43.

⁶ Id at p. 2, l. 43 to p. 3, l. 48.

123 A. Neither Mr. Eller’s Rebuttal Testimony, nor the Expert Report contained any
124 information that explained any additional details about what [REDACTED]

125 [REDACTED]

126 [REDACTED]

127 **Q. WHEN WAS THE SUBSTATION INSTALLED AND HOW LONG DID**
128 **THE SUBSTATION OPERATE BEFORE THE FIRE OCCURRED?**

129 A. The substation was initially energized on November 9, 2020, and the outage
130 occurred on September 29, 2021, nearly a year after installation took place.⁷

131 **Q. DID THE COMPANY PROVIDE ANY INFORMATION [REDACTED]**
132 [REDACTED]
133 [REDACTED]
134 [REDACTED] **BEFORE THE FIRE OCCURRED?**

135 A. The Company provided no information [REDACTED]
136 [REDACTED]
137 [REDACTED]
138 [REDACTED]
139 [REDACTED]

140 **Q. HAS THE COMPANY PROVIDED ANY INFORMATION ABOUT THE**
141 [REDACTED]
142 [REDACTED] **IN THE YEAR SINCE THE OUTAGE OCCURRED AND**

⁷ Response Testimony of Craig Eller, l. 66.

143 **HAS IT EXPLAINED WHY IT IS TAKING SO LONG TO [REDACTED]**

144 **[REDACTED]?**

145 A. No it has not. The Company has provided no information about [REDACTED]

146 [REDACTED]

147 [REDACTED]

148 [REDACTED]

149 [REDACTED]

150 [REDACTED]

151 [REDACTED]

152 [REDACTED]

153 [REDACTED]

154 [REDACTED]

155 [REDACTED]

156 **Q. DO YOU CONTINUE TO BELIEVE THE DEFERRAL BALANCE**
157 **SHOULD BE ADJUSTED TO ACCOUNT FOR REPLACEMENT POWER**
158 **COST AND PTC IMPACTS?**

159 A. Yes, I do. [REDACTED] of such a catastrophic nature should never occur in an electrical
160 system. That is not to say they never do occur, however, they are rare events, and
161 it is difficult to imagine [REDACTED]

162 [REDACTED]

163 [REDACTED]

164 [REDACTED]

165 [REDACTED]

166 [REDACTED]

167 [REDACTED]

168 [REDACTED]

169 [REDACTED]

170 [REDACTED]

171 [REDACTED] OCS

172 continues to recommend that an adjustment to the deferral balance should be made

173 to account for replacement power cost and PTC impacts.

174 **Q. HAVE THERE BEEN ANY EXAMPLES IN WHICH THE COMMISSION**

175 **FOUND THE COMPANY IMPRUDENT WHEN A CONTRACTOR WAS**

176 **RESPONSIBLE FOR AN OUTAGE?**

177 A. Yes. In the Commission’s 2019 EBA Order, it stated that one of PacifiCorp’s

178 outages at Craig Unit No. 2 was caused by work performed by General Electric

179 (“GE”), and it found the outage was imprudent, despite finding that it was a

180 reasonable decision to hire GE to do the work. The Commission ultimately

181 concluded there were too many unanswered questions by RMP. With regard to the

182 outage, the Commission stated:⁸

183 Accordingly, we find PacifiCorp has failed to meet its burden to

184 establish the prudence of the expenses related to this unplanned

185 outage because it has not provided enough information about the

186 cause of the outage for us to determine that the pressure test was

⁸ 2019 Order, p. 7.

187 adequate, or that other appropriate procedures were properly carried
188 out.

189 The Commission ultimately concluded that PacifiCorp failed to meet its
190 burden and that the replacement power costs associated with the event had
191 to be removed from the EBA.

192 **Q. HAVE YOU DEVELOPED A REVISED ESTIMATE OF THE**
193 **ADJUSTMENT TO THE DEFERRAL BALANCE?**

194 A. Yes. In this testimony, I present a revision to the adjustment that I included in my
195 Direct Testimony. In my Direct Testimony, I relied on the Company's response to
196 Confidential UAE 5.1 to develop my estimate of replacement power costs
197 associated with the Aeolus outage. As part of the analysis, I relied on the
198 Company's estimate of replacement power costs and PTC impacts, but I adjusted
199 the Company's estimate to account for the tax effect of PTC costs, carrying costs,
200 and the allocation of costs to Utah. Ultimately, I derived a recommendation for the
201 total reduction to the deferral balance, which I presented in my Confidential Exhibit
202 OCS 1.2D attached to my Direct Testimony.

203 **Q. WERE OTHER ESTIMATES OF REPLACEMENT POWER AND PTC**
204 **COSTS PROPOSED SUBSEQUENT TO THE ESTIMATE YOU**
205 **PROVIDED IN DIRECT TESTIMONY?**

206 A. Yes. DPU Witnesses DiDominco and Koehler provided their estimate of
207 replacement power costs associated with the same outage when they filed Rebuttal
208 Testimony. The DPU methodology relied on a comparison of average generation

209 costs based on actual NPC and the cost of replacement energy priced at monthly
210 historical market prices reported by Intercontinental Exchange, Inc. (“ICE”).⁹ In
211 addition, PacifiCorp provided a 1st revised response to UAE 5.1 that contained an
212 update to the replacement power cost calculation for the Aeolus outage that it had
213 provided in the original UAE 5.1 response. The Company’s revised estimate
214 included both a correction for the valuation of wind energy and an update to the
215 calculation methodology. In the 1st revised response to UAE 5.1, the Company
216 stated:

217 After reviewing the original calculation, the Company has identified
218 two changes—one update and one correction--in the cost
219 calculations in tab “NPC without PTC-Summary” of Confidential
220 Attachment UAE 5.1. First, the original calculation used a cost
221 estimate for natural gas generation of the Company’s owned
222 PacifiCorp East (PACE) natural gas generating facilities at the time
223 of the outage of \$40 per megawatt-hour (\$/MWh). The Company
224 has now updated that original cost estimate with the actual cost of
225 generation from this energy balancing account (EBA) filing.
226 Second, the original calculation included production tax credit
227 (PTC) impacts of the curtailed wind generation even though the
228 impact to PTCs were accounted for separately in the original
229 attachment.

230 Additionally, Company Witness Painter’s Rebuttal testimony included a minor
231 correction to OCS’ calculation regarding the allocation of replacement power costs
232 to Utah for wind resources, noting that the replacement energy costs should be
233 allocated based on a System Generation (SG) factor rather than a System Energy
234 (SE) factor, as I had used in my Direct Testimony.

⁹ Rebuttal Testimony of DiDomenico and Koehler for DPU, starting at page 12, line 205.

235 **Q. WITH THIS NEW INFORMATION, HAVE YOU REVISED YOUR**
236 **ESTIMATE OF REPLACEMENT POWER COSTS AND PTCS**
237 **ASSOCIATED WITH THE OUTAGES?**

238 A. Yes. In review of the Company's supplemental response to UAE 5.1, the DPU's
239 rebuttal testimony, and the correction provided by Mr. Painter, I have put together
240 Confidential Exhibit OCS 1.1S. This exhibit compares the original estimate
241 provided in UAE 5.1, the revised estimate provided in supplemental response to
242 UAE 5.1, and the DPU's rebuttal testimony.

243 **Q. WHAT DO YOU NOW ESTIMATE THE COST OF THE OUTAGES WERE**
244 **TO UTAH CUSTOMERS?**

245 A. I adopt the DPU's estimate as found in DPU Witnesses DiDomenico and Koehler's
246 Rebuttal Testimony, discussed between lines 247 and 252, and I agree that a market
247 price methodology is a more accurate estimate of replacement power costs than an
248 average gas unit price replacement analysis. Based on the DPU's methodology, the
249 adjustment for the outages would be approximately \$14.2 million on a Utah basis,
250 and the final adjustment would be approximately \$14.5 million after including
251 interest expense.

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

253 A. Yes, it does.

CERTIFICATE OF SERVICE

Docket No. 22-035-01

I CERTIFY that on December 5, 2022, a true and correct copy of the foregoing Redacted Surrebuttal Testimony of Phillip Hayet on behalf of the Office of Consumer Services was served by email to the following:

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