
Rocky Mountain Power’s Application for Approval of the 2022 Energy Balancing Account	<u>DOCKET NO. 22-035-01</u>
	<u>ORDER</u>

ISSUED: January 9, 2023

1. Procedural Background

On March 15, 2022, Rocky Mountain Power (RMP) filed its Application for Approval of the 2022 Energy Balancing Account (“Application”). The Application requested rate recovery of approximately \$90.6 million in deferred energy balancing account costs (“2021 EBAC”) and to begin collecting the 2021 EBAC, on an interim basis, effective May 1, 2022.

The Public Service Commission (PSC) held a virtual scheduling conference on March 29, 2022 and participating parties stipulated to an adjudication schedule. On April 6, 2022, the PSC issued a Scheduling Order and Notice of Hearings (“Scheduling Order”) that adopted the stipulated schedule and set (1) deadlines for preliminary comments and a hearing to consider RMP’s request for interim rates; (2) a deadline for the Division of Public Utilities (DPU) to subsequently file a report (“Audit”) detailing its findings after the opportunity to conduct a more comprehensive review of RMP’s Application; (3) deadlines for parties to submit several rounds of written testimony responding to the Application and Audit; and (4) a hearing to consider the merits of RMP’s Application and finalization of the associated rates.

Consistent with the Scheduling Order, after holding a virtual hearing on April 26, 2022, the PSC issued an Order Approving Interim Rates on April 29, 2022.

The DPU timely filed its Audit on September 21, 2022.

Subsequently, RMP, DPU, the Office of Consumer Services (OCS), and intervenor Utah Association of Energy Users (UAE, and collectively the “Parties”)¹ filed written direct, rebuttal, and surrebuttal testimony.

On December 8, 2022, the PSC held a hearing to consider approval of final rates. All Parties appeared and testified.

2. Regulatory Background

Generally, RMP recovers the costs it incurs to serve customers through base rates the PSC has set in RMP’s most recent general rate case. Recognizing the volatility of certain marginal costs such as fuel and purchased power, Utah law allows RMP to operate an “energy balancing account” (EBA) that tracks the difference between the amount RMP actually incurs for certain eligible costs (collectively, “EBA Costs”) and the amount RMP has recovered for these costs through base rates over the same period and facilitates recovery or refund of the difference. Utah Code Ann. § 54-7-13.5 (“EBA Statute”). Generally, the EBA mechanism operates to mitigate the risks associated with these costs for both RMP and customers and spares all stakeholders the cost of litigating comprehensive general rate cases that would be unnecessary but for swings in fuel costs and other EBA Costs.

Pursuant to Schedule 94 of its tariff, and consistent with the EBA Statute and the PSC’s prior orders, RMP files a reconciliation of its EBA Costs annually on or before March 15. Subsequently, the DPU has approximately six months to conduct a thorough audit and submit a

¹ UAE filed a petition to intervene, which the PSC granted on April 11, 2022.

report to the PSC.² RMP, DPU, OCS, and other intervening stakeholders then have an opportunity to present evidence at hearing after which the PSC sets final rates associated with RMP's annual EBA filing.

3. Factual Background and Party Positions

Here, RMP's Application initially sought to recover \$90.6 million comprised of "\$107.6 million of EBA-related costs," "approximately \$2.9 million in costs for Utah situs resources," approximately \$2.6 million in interest, and a credit of approximately \$22.4 million for sales made to a special contract customer.³

DPU prepared its Audit of RMP's Application with contracted assistance from Daymark Energy Advisors, Inc. The Audit recommends the PSC allow recovery of approximately \$88.9 million, reducing RMP's recovery by approximately \$1.8 million. The bulk of the reduction (\$1.6 million) relates to outages at generation plants and associated costs with the rest correcting for a carrying charge calculation error in the Application⁴ and another nominal error relating to RMP's calculation of production tax credits (PTCs). DPU also requested RMP provide certain additional detail in its next annual EBA filing with respect to calculation of PTCs.

² As recently amended, the EBA Statute provides the PSC "may issue a final order establishing and fixing [RMP's] energy balancing account" within 300 days of RMP's filing. To facilitate this statutory time frame, the PSC has approved procedural deadlines that are incorporated into Schedule 94, including the DPU's filing of its audit by September 21 of each year.

³ Application at 1.

⁴ During the April 26, 2022 hearing to consider RMP's request for interim rates, RMP testified its Application contained an error in the rate used to calculate the carrying charge that resulted in a decrease of RMP's requested recovery of approximately \$200,000 and stated its intention to correct the matter in later filed testimony.

Significantly, in written rebuttal testimony, much of which is designated confidential, DPU substantially revised its recommended adjustment, recommending the PSC allow recovery of \$74.9 million, \$15.8 million less than RMP's Application requests. DPU summarized the adjustments at hearing as follows: (1) \$189.6 thousand to correct RMP's acknowledged carrying charge error; (2) \$104.5 thousand to remove fees associated with the Western Power Pool Western Resource Adequacy Program and Energy Imbalance Market Body of State Regulators (collectively, "Regional Entity Fees"); (3) \$14.5 million for replacement power costs associated with six thermal generator outages and a fire at the Aeolus substation that caused wind generator outages at TB Flats (collectively, the "Outages"); (4) \$928 thousand in PTCs from the outage at the Aeolus substation; and (5) \$785 to correct for net negative generation recorded at TB Flats in January 2021 that RMP included in its calculation of PTCs.⁵

OCS concurs with DPU regarding the outages, recommending a "final adjustment [of] approximately \$14.5 million after including interest expense."⁶ UAE's testimony primarily focused on challenging RMP's inclusion of the Regional Entity Fees, arguing they are "outside the scope of the costs authorized to be recovered through Schedule 94."⁷ UAE also provided testimony arguing for, at best, conditional recovery of amounts associated with the outages stemming from the Aeolus substation fire.

⁵ Dec. 8, 2022 Hr'g Tr. at 141:4-142:12.

⁶ Surrebuttal Test. of P. Hayet at 12:245-251.

⁷ Surrebuttal Test. of K. Higgins at 3:48-49.

In response to the DPU's Audit, RMP accepted and made two corrections to its requested 2021 EBAC, subtracting (1) \$189,552 to correct for the carrying charge error and (2) \$785 to correct RMP's PTC calculation with respect to the net negative generation at TB Flats. RMP contests all of DPU's recommended adjustments pertaining to costs associated with outages and Regional Entity Fees. In response to the DPU's request for additional information in future EBA filings, RMP committed to "add a subpart to EBA filing requirement 6 that provides the Base PTCs and Actual PTCs by plant by month."⁸

Accordingly, two categories of disputed issues persist: (1) costs associated with each of the Outages and (2) costs associated with the Regional Entity Fees. To avoid redundant discussion, the PSC does not summarize the particulars of each circumstance and issue here but discusses each of them in the Discussion, Findings, and Conclusions below.

4. Legal Standard

Under the EBA Statute and the PSC's prior orders, RMP is entitled to recover "prudently-incurred" EBA Costs. However, the law is clear: to recover them, the "utility has the burden to prove that its costs are prudently incurred – or are 'just and reasonable' – by 'substantial evidence.'"⁹

The EBA Statute does not define what constitutes a "prudently-incurred" cost, but Title 54 elsewhere requires the PSC to "apply the following standards in making its prudence determination[s]" for ratemaking purposes: (i) ensure just and reasonable rates for retail ratepayers; (ii) "focus on the reasonableness of the expense resulting from the action ... judged

⁸ Response Test. of J. Painter at 6:94-95.

⁹ *OCS v. PSC*, 2019 UT 26, ¶ 46 (2019).

as of the time the action was taken”; (iii) “determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action”; and (iv) “other factors determined by the [PSC] to be relevant.”¹⁰

The PSC has considered the issue several times in recent years. In 2019, the PSC enumerated numerous conclusions of law “generally applicable to any EBA filing,” including that “[a] prudence determination is heavily dependent on the facts that must be evaluated on a case-by-case basis and judged as of the time the action was taken.”¹¹ That order made various conclusions that pertained to certain kinds of circumstances, *e.g.* human error, mistakes that independent contractors make, etc. Here, the PSC refers to those specific standards in the analysis where pertinent.

In 2020, the PSC made additional clarifications. The PSC rejected the argument that RMP cannot possibly meet its burden where, despite exhaustive investigation, the cause of an outage cannot be determined.¹² The PSC similarly rejected the argument that a vendor’s mistake is dispositive, emphasizing whether a reasonable utility would have taken the same actions as RMP was a central factor. There, the PSC concluded: “RMP’s burden does not require RMP to prove a negative, *i.e.* RMP need not provide evidence showing the absence of any possibility that it made an imprudent choice or took an imprudent action.”¹³

¹⁰ Utah Code Ann. § 54-4-4(4).

¹¹ *Application of RMP to Increase the Deferred EBA Rate through the EBA Mechanism*, Docket No. 18-035-01, Order issued March 12, 2019 at 2 [hereafter “2019 Order”].

¹² *RMP’s Application for Approval of the 2020 EBA*, Docket No. 20-035-01, Order issued February 26, 2021 at 9-11 [hereafter “2020 Order”].

¹³ *Id.* at 10.

Instead, “if RMP provides substantial evidence that its actions with respect to an outage were prudent, the party contending RMP failed to act prudently must at the very least rebut that substantial evidence by identifying some action RMP took or failed to take that was not prudent in relation to circumstances leading to the outage.”¹⁴ The PSC observed, “[t]his expectation does not shift the burden to the contesting party to ‘demonstrate imprudence’ ... but it does preclude them from relying on the inexplicable nature of the underlying event or a third-party’s conduct to render irrelevant all evidence of RMP’s actual conduct.”¹⁵

5. Discussion, Findings, and Conclusions

a. The Contested Outages.

The PSC notes the Parties designated much of the testimony and evidence in this docket “confidential,” and a significant portion of the hearing on December 8, 2022 was closed to preserve confidentiality. To preserve confidentiality, the PSC’s explanation of the specifics of each outage is generally limited to information RMP publicly disclosed in non-redacted portions of its testimony. The PSC’s findings and conclusions, however, are based on the entirety of the record, and the PSC alludes to confidential information, without disclosing it, where appropriate.

The six outages at thermal generators are as follows: (1) Blundell Unit 1, on September 15, 2021 (“Blundell Outage”); (2) Craig Unit 1, on July 25, 2021 (“Craig Outage”); (3) Dave Johnston Unit 1, on November 27, 2021 (“DJ 1 Outage”); (4) Dave Johnston Unit 2, on April 12, 2021 (“DJ 2 Outage”); (5) Dave Johnston Unit 3 on May 17, 2021 (“DJ 3 Outage”); and (6) Lake Side Block 1, on November 15, 2021 (“Lake Side Outage”). Additionally, several more

¹⁴ *Id.*

¹⁵ *Id.*

contested outages all stem from a fire at the Aeolus substation on September 29, 2021 that interrupted wind generation resources at TB Flats 1 and 2 (collectively, “Aeolus Outages”).

- i. *RMP provided substantial evidence it prudently incurred costs with respect to the Blundell Outage.*

RMP took Blundell Unit 1 offline on September 13, 2021 to facilitate substation maintenance. On September 15, 2021, as RMP prepared to resume the unit’s operation, the main steam control valve did not adequately seal, which kept the unit offline beyond the planned maintenance period. RMP subsequently identified “a poor sealing surface inside the valve” and deemed it irreparable.¹⁶

Shortly before the outage, in spring of 2021, RMP had contracted with a third-party vendor through a competitive bid process to perform work on the generator. The contractor’s scope of work included disassembly, inspection, cleaning, and reassembly of the subject valve.

After the outage, RMP hired a different vendor, Bay Valve, to inspect and repair the valve. Though the details of Bay Valve’s inspection are in the confidential record, the result was that “a conclusive root cause could not be determined.”¹⁷ Bay Valve recommended RMP replace the valve, and RMP promptly contracted Bay Valve to install the replacement using a spare valve from RMP’s onsite inventory. Bay Valve installed the replacement and RMP returned the unit to service on September 22, 2021.

In its Audit, DPU recommended disallowance of \$80,622 on a Utah-allocated basis for replacement power costs associated with the Blundell Outage. While the entirety of the Audit is

¹⁶ Resp. Test. of B. Richards at 2:40-45.

¹⁷ *Id.* at 4:69.

marked confidential, it contains only a couple sentences addressing RMP's prudence with respect to the Blundell Outage, simply stating the failure was "unacceptable" because the valve had recently been rebuilt and RMP acted imprudently in failing to seek damages from the contractor that rebuilt the valve. In confidential rebuttal testimony, DPU again urged RMP should have sought legal recourse against the former contractor.

Confidential portions of RMP's testimony broadly detail its process in procuring services from the initial contractor, RMP's management of the contract, RMP's evaluation of the contractor's work, RMP's conclusion that a "conclusive root cause could not be determined," the actions it took with respect to the contractor, and its evaluation of any legal claims against the contractor and the economics of pursuing them.¹⁸ RMP also explains in public testimony that vendor contracts in the industry "almost always" preclude recovery of damages associated with replacement power costs because vendors typically are either unwilling to enter contracts that expose them to such potentially significant liability or would require significantly higher prices to compensate them for the exposure.¹⁹

In confidential testimony, DPU argues the PSC's 2019 Order supports the proposition that RMP is liable for imprudent actions of its contractors. However, as the 2020 Order makes clear, the PSC does not impose a standard akin to *respondeat superior* with respect to the actions of independent contractors when evaluating whether a utility prudently incurred costs. Instead, while evaluating all the factors enumerated in the 2019 Order and Title 54, the PSC looks to the actions of the utility and assesses "whether a similarly situated, reasonable, and responsible

¹⁸ See, e.g., Surrebuttal Test. of B. Richards at 3:20-4:53.

¹⁹ *Id.* at 5:57-65.

utility would have acted differently.”²⁰ Where RMP has provided substantial evidence that it acted reasonably and responsibly, a party challenging recovery must rebut it “by identifying some action RMP took or failed to take that was not prudent in relation to circumstances leading to the outage.”²¹

DPU identifies only one such action or inaction on the part of RMP (as opposed to the third-party contractor): RMP’s election not to pursue civil damages against the vendor. We find RMP’s analysis on this question, detailed in the confidential record, to be reasonable and prudent. We find the associated litigation expenses, the relatively small magnitude of any potential recovery, and the uncertain chances of securing a favorable judgment (again, an independent inspection yielded no definitive root causes) are more likely than not to prove uneconomic for RMP and customers.

Moreover, while the PSC certainly encourages and expects RMP to pursue legal remedies where it is reasonable to do so (i.e. where a monetary judgment or other remedies would reap benefits to RMP and customers that outweigh the risks and costs associated with litigation), the PSC concludes setting a standard that incents RMP to expend resources on non-economic claims solely to buttress RMP’s chances of securing cost recovery in proceedings before the PSC would be bad policy and ultimately harm ratepayers.

In summary, we find RMP has provided substantial evidence it acted prudently in (1) obtaining the vendor’s services through a competitive bid, (2) responsibly managing its contract with the vendor, (3) acting promptly to contract a different vendor to investigate the faulty valve

²⁰ 2020 Order at 10.

²¹ *Id.*

and replace it with one already onsite, (4) taking appropriate actions with respect to the first vendor short of litigation to mitigate whatever costs RMP reasonably could, (5) evaluating responsibly the merits and economics of a potential civil claim, and (6) declining to expend resources pursuing an uncertain claim to obtain, at best, a relatively small monetary judgment.

The PSC declines to adopt DPU's proposed adjustment with respect to the Blundell Outage.

- ii. *RMP failed to provide substantial evidence it prudently incurred costs with respect to the Craig Outage.*

On July 25, 2021, a loss of feedwater heater pressure caused an outage at Craig Unit 1. RMP's investigation of the failure determined an expansion bellows (a flexible section of pipe that accommodates expansion and contraction of the pipe) on a steam extraction pipe had failed. The bellows had been installed during a planned outage in 2014. RMP testified the bellows was not an "off-the-shelf" component, and a vendor custom manufactured it based on the dimensions of the component it replaced in 2014. RMP's root cause analysis (RCA) determined two possible contributing factors existed to the failure: (1) additional fatigue stress from increased thermal cycling, due to the need for the plant to ramp up and down to accommodate higher levels of renewable generation and (2) incorrect design of the bellows as installed in 2014. With respect to the latter, RMP testified the bellows should have included a clamp that limits horizontal expansion. RMP further testified the problem was not apparent to plant personnel who installed the bellows at issue because the bellows "was the proper size and the inspection after installation did not indicate that there might be an issue in the future that could lead to premature wear."²²

²² Resp. Test. of B. Richards at 6:127-30.

In contesting recovery of power replacement costs associated with the Craig Outage, DPU quotes RMP's RCA document as flatly stating "[t]he bellows were not the correct design" and "[d]uring the 2014 outage, replacing the bellows with the correct design would have increased the life span of the bellows."²³

In response, RMP argues DPU ignores the failure "could have been caused by increased load cycling to accommodate renewable energy resources."²⁴ RMP also emphasizes the component failed after seven years of service, implying successful operation for seven years suggests the incorrect design is unlikely to have been the actual cause of the failure. Finally, RMP touts it acted responsibly, once the bellows failed, in conducting an RCA and replacing the bellows with "an improved design to better accommodate the new demands of the plant."²⁵

DPU responds that RMP's suggestion that increased load cycling likely caused the failure is "highly speculative" and argues that if RMP had installed the correct design in 2014, this outage would not have occurred. Regardless, DPU contends, increased load cycling cannot excuse RMP's installation of an incorrect design in the first instance.

In sum, according to its own analysis, RMP was responsible for installing an incorrectly designed component that failed and caused the outage. RMP offers no evidence to suggest its actions were prudent. While RMP urges increased cycling of the plant could have caused the failure, RMP presents no evidence suggesting the increased cycling would have caused the outage had RMP installed the correct design. In fact, the RCA states "replacing the bellows with

²³ Confidential Rebuttal Test. of P. DiDomenico and D. Koehler at 6:81-83.

²⁴ Response Test. of B. Richards at 6:133-134.

²⁵ *Id.* at 7:136-140.

the correct design [in 2014] would have increased the lifespan of the bellows.”²⁶ The fact RMP operated its plant more aggressively to accommodate its changing resource mix lends no weight to RMP’s contention it acted prudently. RMP’s contention its personnel were unaware the design was incorrect in 2014 only serves to demonstrate RMP was not actively negligent; it lends no support to RMP’s argument it acted prudently. RMP’s repeated observation the incorrectly designed component took seven years to fail is similarly unhelpful. No party speaks to the expected service life of the component but it must have been more than seven years, likely significantly longer.

We find RMP has failed to provide substantial evidence it acted prudently with respect to the circumstances leading to the Craig Outage. We approve DPU’s proposed adjustment to the 2021 EBAC as identified on page 28 of its Audit.

iii. *RMP provided substantial evidence it prudently incurred costs with respect to the DJ 1 Outage.*

On November 27, 2021, Dave Johnston Unit 1 lost a 480V bus. RMP subsequently discovered a fire in a 480V cable tray that caused conductors to short circuit and trip the breaker. RMP testified it quickly extinguished the fire and commenced efforts to repair the damaged cables. Ignition of accumulated coal dust appears to have caused the fire.

DPU asks for an adjustment to disallow \$292,301 in power replacement costs on a Utah-allocated basis, arguing a “simple solution” existed to avoid the fire: installation of cable tray covers. DPU points out that, after the incident, RMP installed covers in the affected area as a

²⁶ See, e.g., Confidential Dec. 8, 2022 Hr’g Tr. at 156:9-11.

mitigation measure and argues RMP could have avoided the fire by proactively installing the covers earlier.

RMP argues “[a]s the operator of coal plants over many decades, [RMP] certainly understands that coal dust is a risk inherent [to] coal fired power plants” and testifies RMP “performs regular washdowns and routine cleaning of horizontal surfaces in locations that are accessible or known to collect . . . dust.”²⁷ RMP asserts it is not feasible to eliminate all traces of coal dust and the “ignition of coal dust in this area was not foreseeable or expected.”²⁸

With respect to the covers, RMP testified “[t]here are thousands of square feet of cable trays within each coal plant” and RMP had no means “to predict exactly where the cable tray covers were needed before the event occurred.”²⁹ RMP represented implementing DPU’s proposed “simple solution” would have required installation of covers throughout the unit, which would not have been “justifiable or reasonable.”³⁰ Additionally, RMP asserts covers “may not have been effective at preventing the fire” because the area is inaccessible and covers “do not completely solve the issue of coal dust build-up in the cable trays.”³¹

RMP argues DPU is using “hindsight to imply causation,” effectively punishing RMP for implementing a mitigation measure after the event that prompted RMP to identify the area as an

²⁷ Response Test. of B. Richards at 8:168-174.

²⁸ *Id.* at 9:183-84.

²⁹ Surrebuttal Test. of B. Richards at 7:98-101.

³⁰ *Id.* at 7:101-03.

³¹ *Id.* at 7:104-06.

increased fire risk.³² RMP maintains the event “was a rare unforeseen occurrence” that it “addressed promptly and efficiently.”³³

We find RMP has provided substantial evidence it acted prudently with respect to the DJ 1 Outage. Specifically, RMP’s testimony illustrates it well understands that build-up of coal dust presents an inherent fire risk for these plants and that RMP maintains a regular cleaning schedule to mitigate that risk. After the fire, RMP worked expeditiously to address the problem and instituted an additional mitigation measure, covers in the affected area. While DPU declares RMP ought to have installed covers prior to the fire, the evidence suggests installing covers over every cable tray would be cost-ineffective and impractical and RMP could not have reasonably anticipated a fire was likely to arise in the specific area that it did.

Here again, we are disinclined to adopt a standard that wrongly incents RMP. In the absence of any evidence suggesting RMP could reasonably have identified the location as a uniquely suitable candidate for covers before the fire, concluding RMP’s subsequent installation of covers in that area suggests RMP acted imprudently in failing to do so sooner is bad policy. It would discourage RMP from adapting swiftly to new information in the future for fear it will be measured against what it learned from the incident as opposed to what it knew at the time it occurred. Of course, where evidence suggests RMP knew or should have known a mitigation measure was appropriate prior to an incident, its subsequent actions cannot shield RMP from its earlier failure. No such evidence exists here.

We decline to adopt DPU’s proposed adjustment associated with the DJ 1 Outage.

³² *Id.* at 8:108-09.

³³ *Id.* at 8:115-16.

- iv. *RMP provided substantial evidence it prudently incurred costs with respect to the DJ 2 Outage.*

On April 12, 2021, RMP took Dave Johnston Unit 2 offline because a bearing leaked oil that ignited. RMP had been contending with intermittent oil leakage on the unit for some time. “Initially, this was corrected by increasing suction of the turbine oil tank, but this method proved” to contaminate lubrication oil and RMP discontinued it.³⁴ RMP testified it had taken other measures to fix the intermittent problem, including “connecting seal air to the bearing,” which had “limited effectiveness,” and making “modifications to the bearing oil porting to improve drainage.”³⁵

Just prior to the DJ 2 Outage, RMP began “adjusting load on the unit to find the optimal generation level to minimize leakage before bringing the unit offline for repair.”³⁶ Ultimately, however, RMP took the unit offline on April 12, 2021, allowed it to cool, and disassembled and inspected the bearing. Based on this inspection, RMP believed internal oil deflectors were contributing to the leaking and replaced them. Almost a month later, the bearing began to leak again and it ultimately ignited. RMP immediately took the unit offline, extinguished the fire, and retained an engineering firm “with expertise in bearings.” RMP sent the bearing off-site for the engineering firm to modify it. Weeks later, RMP installed the modified bearing and returned the unit to service.

DPU argues the PSC should deny replacement power costs associated with the outage in the amount of \$36,502 on a Utah-allocated basis. In its Audit, DPU argues the long history of

³⁴ Response Test. of B. Richards at 9:190-91.

³⁵ *Id.* at 9:192-94.

³⁶ *Id.* at 9:194-96.

intermittent oil leakage and what it characterizes as RMP's failure to "initiate proper corrective action" until after a fire "is on its face imprudent." DPU declares the fire and resulting outage were readily avoidable. In confidential rebuttal testimony, DPU acknowledges RMP's history of attempts to resolve the issue and recognizes "troubleshooting is an iterative process." Nevertheless, DPU continues to urge RMP imprudently failed to consult a third-party engineering firm until after a fire. DPU characterizes this as a reactive, as opposed to proactive, approach and affirms its opinion that the outage was imprudent and avoidable.

RMP rebukes DPU's characterization of its efforts to address the leakage prior to retaining a third-party firm as "reactive," arguing DPU's sole apparent criteria for distinguishing between "reactive" and "proactive" efforts is whether they proved sufficient to resolve the issue. RMP testifies its efforts prior to retaining the third-party firm "were conceived and executed in consultation with subject matter experts" and that prior to the outage RMP "had taken multiple steps that were part of an iterative process to address this issue [and] to identify a solution."³⁷ Each of these iterative attempts eliminated options that were unsuccessful in solving the problem. RMP also testified it has proactively performed bearing modifications for Dave Johnston Unit 1, which utilizes similar bearings.

The record before us shows RMP was aware of a persistent problem with the unit leaking oil and that RMP was equally persistent in trying numerous methods to remediate it. We reject DPU's conclusory declaration that RMP's conduct was imprudent "on its face," which appears

³⁷ Surrebuttal Test. of B. Richards at 8:125-9:129.

premised solely on RMP's failure to contract a third-party engineering firm until after the outage occurred, notwithstanding RMP's consistent efforts to solve the problem.

With the benefit of hindsight, it is obvious RMP could have resolved the situation earlier by taking the unit offline (necessitating an earlier outage and likely associated power replacement costs) and sending the bearing for modification to the third-party firm. However, no evidence presented suggests RMP had any reason to know this relatively costly approach would ultimately be necessary to resolve the issue.

All the record demonstrates is that RMP knew of the problem and worked diligently, though unsuccessfully, to resolve it on site. Perhaps reasonable minds might disagree as to whether RMP's numerous attempts to repair the problem were consistent with the actions of a reasonable, similarly situated utility, or more simply: whether they were reasonably likely to succeed from an engineering and mechanical point of view. However, RMP supplies the only testimony on this point and affirms its efforts were "conceived and executed in consultation with subject matter experts." DPU offers no testimony as to whether any of RMP's specific efforts were reasonable and appropriate; it simply declares that because they did not succeed prior to the outage, they were imprudent. The fact that an effort did not succeed does little to inform whether it was reasonably and responsibly undertaken.

We find RMP has presented substantial evidence it acted prudently in attempting to address the problem and decline to approve DPU's requested adjustment with respect to the DJ 2 Outage.

- v. *RMP provided substantial evidence it prudently incurred costs with respect to the DJ 3 Outage.*

On May 17, 2021, electrical leads stemming from a boiler feed pump on Dave Johnston Unit 3 caught fire. When RMP took the pump offline, the unit later tripped because the drum level was low. As RMP attempted to restart the unit, a feedwater heater (“FWH”) started to leak. RMP kept the unit offline and plugged the leaks before returning it to service.

DPU seeks an adjustment of \$71,686, on a Utah-allocated basis, in denied power replacement costs associated with this outage, contending RMP should have replaced the FWH prior to the outage owing to its age. DPU represents the FWH was 38 years old when the outage occurred and well beyond “any reasonable life expectancy,” which DPU suggests would be between 15 and 25 years. DPU characterizes RMP as taking a “run to failure” approach for the plant, adding that aging FWHs operating past their designed service life are expected to suffer from increasingly frequent leaks. DPU also criticizes RMP for not providing a meaningful analysis of the costs and benefits of running the equipment past its expected service life. DPU concludes the outage was avoidable had the FWH been replaced.

RMP disputes this characterization. RMP explains that “[d]ecisions about when to replace, repair, or do nothing with specific equipment are made on an individual basis.”³⁸ RMP urges a distinction exists between “expected service life,” which RMP characterizes as a generic estimate based on generalized experience, and “useful life,” which RMP defines as an

³⁸ Surrebuttal Test. of B. Richards at 9:141-42.

“assessment of a working component as it ages, and whether a component can be reliably repaired.”³⁹

RMP emphasizes the unit is nearing retirement and it acted prudently by not replacing a component that has useful life remaining on a unit soon to be retired. RMP represents it “reasonably relied on its experience and [judgment] to inform its decisions as to when to replace, repair[,] or continue to use [the] equipment” and concludes “[i]t would not be in the best interest of customers for [RMP] to automatically replace equipment simply because of its age.”⁴⁰ RMP points out FWH leaks can be repaired, “such repairs often result in continued reliable operation,” and the FWH at issue is presently in service.⁴¹

As a general matter, the PSC finds it reasonable and appropriate for RMP to exercise its judgment, based on its engineering assessment of the actual ongoing capability of equipment, is more reasonable and better serves customers than automatic replacement of equipment based on a rigid, predetermined schedule. We recognize exceptions may exist with respect to certain components, and RMP is ultimately responsible for exercising such judgment in a prudent and responsible manner.

While we recognize DPU’s concern relating to reliance on equipment nearly four decades old, PacifiCorp’s Integrated Resource Plan presently reflects retirement of this plant in 2027.⁴²

While the record contains no cost estimates, the PSC and its staff understand FWHs are generally

³⁹ Response Test. of B. Richards at 11:230-31.

⁴⁰ Surrebuttal Test. of B. Richards at 9:143-10:146.

⁴¹ Response Test. of B. Richards at 11:231-33.

⁴² See, e.g., *PacifiCorp’s 2021 Integrated Resource Plan*, Docket No. 21-035-09, 2021 Integrated Resource Plan Update filed March 31, 2022 at 12.

a significant (i.e. seven-figure) capital investment. RMP's election to retain an old FWH that it believes it can continue to operate, repairing it if necessary, rather than replace it with a new one with respect to a plant that is expected to shutter in four years is not unreasonable.

We find RMP's testimony provides substantial evidence RMP acted prudently in electing to repair, as necessary, rather than replace the FWH. Therefore, we decline to approve DPU's requested adjustment with respect to the FWH at Dave Johnston Unit 3.

vi. *RMP provided substantial evidence it prudently incurred costs with respect to the Lake Side Outage.*

The Lake Side 1 unit experienced an outage on November 15, 2021. Prior to the outage, RMP took the unit offline to perform planned maintenance on the fire protection system. While the unit was offline, RMP used the opportunity to conduct other maintenance, including installation of a control circuit that required a programming upload to the control system. The upload resulted in a temporary signal loss that, in turn, caused a circulating water pump to malfunction and damage a seal. From that point, the outage was classified as a forced outage because the unit remained offline to repair the seal.

RMP acknowledges one of its technicians made a mistake that caused the problem. Details of the error are discussed in documents designated confidential. It should suffice to note here the mistake involved an employee's failure to verify a system was operational before switching to it.

DPU recommends an adjustment of \$75,022 on a Utah-allocated basis to the associated replacement power costs in the 2021 EBAC, arguing RMP provided insufficient evidence of oversight and control. In its Audit, DPU contends RMP offered no evidence of oversight or

controls that should be in place to help prevent such errors. Subsequently, in its confidential rebuttal testimony, DPU further opined RMP should have had a system of “checks and balances” in place that prevented this type of error from occurring and expressed concern RMP did not immediately institute such a process after this incident.

RMP testified an experienced technician made the error at issue and that RMP addressed the source of the problem with the technician and the management team, and RMP communicated the incident to other relevant personnel. More specifically, RMP testified it investigated the incident as a significant event, and the results were documented and shared with the rest of the fleet using the Significant Event Reporting process. RMP explained it uses a process that catalogs event details, background information, root cause analyses, mitigation or resolution measures taken, and potential impacts outside of the immediate unit. These reports are then disseminated across the fleet for review by each plant where plant management and staff determine whether the impacts are likely to be applicable to any of their units and what actions, if any, each plant and its personnel should take.

RMP also testified it employs a “robust Human Performance program which is regularly reviewed.”⁴³ The circumstances of this outage “were reviewed with the technician team at the Lake Side plant to create awareness and prevent future occurrences.”⁴⁴ RMP argues “[a]dding ever increasing layers of oversight and supervision is not a realistic solution to prevent all human

⁴³ Surrebuttal Test. of B. Richards at 11:165.

⁴⁴ *Id.* at 11:166-67.

error” but RMP is “vigilantly addressing and minimizing human error through efforts such as its Human Performance program.”⁴⁵

RMP argues the PSC “has acknowledged that human errors occur and has balanced that against the actions taken to resolve the issue and prevent occurrences from occurring in the future.”⁴⁶

As with independent contractors (discussed *supra* at 9-10), an employee’s having done something imprudent in relation to an outage is not dispositive of the question whether RMP acted prudently in incurring resulting replacement power costs.⁴⁷ As we specifically recognized in our 2019 Order, the human error is certainly a relevant factor but it does not end the analysis.

From a ratepayer’s perspective, DPU’s contention that customers should categorically not have to pay for RMP’s employees’ errors may appear reasonable, but it is simply not the law in Utah. The PSC must consider the factors “identified in our 2019 Order and those the Legislature has generally instructed us to consider in making prudence determinations, such as whether a similarly situated, reasonable, and responsible utility would have acted differently.”⁴⁸

This standard recognizes that humans inevitably make mistakes and those mistakes are, to a degree, a cost of doing business. The standard for prudence does not require RMP to ensure its employees never make a mistake. The question is whether RMP has provided substantial evidence showing its actions in relation to and surrounding that mistake are reasonable and responsible.

⁴⁵ *Id.* at 11:167-70.

⁴⁶ *Id.* at 10:162-64 (citing 2019 Order at 16).

⁴⁷ *See, e.g.*, 2019 Order at 2.

⁴⁸ 2020 Order at 10.

In our 2019 Order, we considered whether power replacement costs RMP incurred when an inadequately staffed independent contractor installed the wrong component and caused an outage were recoverable. The PSC found human error was the direct cause. Nevertheless, the PSC allowed recovery of the attendant costs because RMP exercised “a level of care” in entering and managing the contract that was prudent.

Similarly here, the evidence shows RMP’s employee made an avoidable mistake that directly caused the outage. However, RMP provided evidence the technician was qualified for the work and that RMP promptly addressed the source of the problem with the technician and management team to create awareness and prevent future occurrences. RMP utilized its Significant Event Reporting process to document the event and share it with the entirety of its fleet so that managers and personnel at each plant could review what occurred and take any appropriate action to ensure the mistake does not happen again. Finally, RMP testified it employs a Human Performance program to minimize the likelihood of human error.

We find RMP has provided substantial evidence it acted appropriately and responsibly to ensure its technician was qualified and enjoyed reasonable and appropriate oversight. We further find RMP took reasonable, responsible, and appropriate actions to address the issue with the technician and communicate the issue to other personnel to prevent future occurrences. Against this evidence, to support DPU’s contention RMP acted imprudently, there is only this one example of an employee’s mistake and DPU’s conclusory assertion RMP should have had unspecified “checks and balances” in place to prevent the error from occurring. DPU does not attest to the existence of any particular, existing program or practice at another utility that would

have precluded such an error and it does not specify with any particularity what it believes RMP should have done but failed to do to prevent the mistake.

But for this one mistake, no evidence exists to suggest RMP's processes with respect to employee performance are substandard, inadequate, or otherwise imprudent. The PSC notes of all the disputed outages the PSC considers in this docket and of all the disputed outages it considered in the 2019 Order and 2020 Order, this is the only outage attributable to an employee's mistake.

The PSC declines to approve DPU's proposed adjustment relating to the Lake Side Outage.

b. RMP Provided Substantial Evidence it Prudently Incurred Costs with Respect to the Aeolus Outages.

A fire occurred at the Aeolus substation on September 29, 2021 that destroyed the transformer and damaged other substation facilities near the transformer. Consequently, the Aeolus substation was not operational from September 29, 2021 to November 9, 2021. This event triggered a series of significant outages at the TB Flats 1 and TB Flats 2 wind generation units in October 2021.

As discussed in its confidential Audit and later amended through confidential written testimony, DPU argues for a substantial reduction in the 2021 EBAC relating to replacement power costs and lost PTCs stemming from the outages. The OCS supports DPU's recommendation and testified in support of it. UAE presents a more qualified opposition to RMP's recovery, arguing that if the PSC approves recovery, it should order the recovery is subject to refund pending a final resolution of the issue.

DPU and OCS contend RMP has failed to provide sufficient evidence to determine whether its actions were prudent in relation to the Aeolus Outages and the PSC should deny recovery on that basis.

i. *Preliminary issues: The Investigation Report and necessity of preserving confidential information in this Order.*

Prior to enumerating its findings and conclusions, the PSC addresses two preliminary items.

First, UAE, DPU, and OCS all expressed concern RMP filed a confidential Investigation Report with its rebuttal testimony on November 18, 2021, less than a month before hearing. The circumstances causing RMP to disclose the report so late in the process are designated confidential but do not suggest RMP did so to prejudice the parties in this proceeding. Consequently, the Investigation Report was admitted into evidence at hearing after the PSC heard no objection. Nevertheless, the report was submitted too late in this process to allow other parties a fair and reasonable opportunity to evaluate it and conduct necessary and appropriate discovery prior to the hearing.

While the Investigation Report was admitted, the PSC finds the advanced disclosure date does influence the weight the PSC ascribes to the Investigation Report. The PSC clarifies that none of its findings and conclusions here rely solely or primarily on the substance of the Investigation Report. However, the PSC finds the existence of the report, i.e. the work RMP performed to prepare it, is relevant evidence and supports RMP's testimony that it is acting responsibly and diligently to manage the Aeolus incident's consequences and to mitigate them.

Second, because RMP is engaged in a dispute with one or more contractors that designed and built the Aeolus substation and the dispute may lead to litigation, almost the entirety of the record on the Aeolus Outages is designated confidential. The circumstances present a unique challenge because the amount at issue is significant and the facts complex, yet this order must refrain from discussing with any particularity most of the evidence lest it too be redacted and rendered incomprehensible to the public. As a primary example, even RMP's testimony identifying the cause of the Aeolus fire in the most basic terms is redacted and confidential.

Therefore, while the PSC's findings and conclusions are based on its review of the entire confidential record, the PSC refrains from discussing the evidence in a manner that would disclose confidential information. Owing to these limitations, the PSC presents its findings and conclusions with respect to the Aeolus Outages as a numbered list in the following section.

ii. *Findings of Fact and Conclusions of Law relating to the Aeolus Outages.*

1. The PSC finds the confidential record contains substantial evidence RMP responsibly relied on a competitive bidding process to select qualified contractors to design and build the Aeolus substation;⁴⁹
2. The PSC finds the confidential record contains substantial evidence RMP responsibly and competently conducted the procurement process;
3. The PSC finds the confidential record contains substantial evidence RMP exercised appropriate and adequate due diligence in evaluating contractors' bids;
4. The PSC finds the confidential record contains substantial evidence RMP acted responsibly and appropriately when selecting the contractors to which RMP would award the contracts to design and build the Aeolus substation based on the competitive merits of their bids;
5. The PSC finds the confidential record contains substantial evidence RMP exercised appropriate due diligence and acted responsibly and competently in finalizing and entering the contracts for designing and building the Aeolus substation;

⁴⁹ The scope of work under the contracts involved much more than construction of the Aeolus substation, but for simplicity and clarity we refer here to the portion of the work at issue.

6. The PSC finds the confidential record contains substantial evidence RMP exercised significant, responsible, and competent oversight of the contractors' performance of their work;
7. The PSC finds the confidential record contains substantial evidence RMP did not cause the fire that led to the Aeolus Outages;
8. The PSC finds the confidential record contains substantial evidence RMP acted swiftly, responsibly, and competently to mitigate the consequences of the fire and outages;
9. The PSC finds the confidential record contains substantial evidence RMP has actively, responsibly, and competently worked to pursue available remedies to mitigate the consequences of the fire and Aeolus outages;
10. The PSC finds RMP presented substantial evidence demonstrating its commitment to return any recovery of damages pertaining to the Aeolus Outages to ratepayers;
11. Based on the foregoing, the PSC finds the confidential record contains substantial evidence RMP acted prudently with respect to the Aeolus Outages; and
12. Based on the foregoing, the PSC concludes RMP is entitled to recover all costs claimed in its Application associated with the Aeolus Outages through the 2021 EBAC.

With respect to UAE's request the PSC condition RMP's recovery for the Aeolus Outages pending a "final resolution of this issue," UAE fails to identify the legal authority under which it asks the PSC to make such an order, what would constitute such a resolution, or any particular process by which the PSC would revisit the issue in the future. Any litigation arising out of the Aeolus fire could take many years to resolve, and the PSC believes serious legal questions exist as to whether the PSC conditioning RMP's recovery on uncertain developments well into the future would constitute a lawful exercise of the PSC's jurisdiction. The PSC declines to invent such a remedy.

The PSC, therefore, declines to adopt the adjustment that DPU and OCS request with respect to the Aeolus Outages.

c. The PSC Approves Inclusion of the Regional Entity Fees in the 2021 EBAC.

UAE argues the PSC should make an adjustment of \$102,464 to remove two Regional Entity Fees for which RMP seeks recovery. One is a fee RMP paid to the Energy Imbalance Market (EIM) Body of State Regulators to support that entity's expenses, amounting to \$44,639 on a Utah-allocated basis. The other is a fee paid for the Western Power Pool Western Resource Adequacy Program, which pays for expenses related to a new regional resource adequacy initiative, amounting to \$57,825 on a Utah-allocated basis.

UAE argues these costs have not previously been included in the EBA and that they do not fall within the scope of costs approved for EBA treatment in Schedule 94.

RMP argues the Regional Entity Fees "are directly tied to [net power costs]" and both provide "benefits to customers through lower [net power costs] in the EBA."⁵⁰ RMP further argues the fee paid to the EIM Body of State Regulators is similar to EIM administrative costs that are already included in the EBA.

The PSC disfavors inclusion of new costs in the EBA that have not been the subject of examination in a prior general rate case, and Schedule 94 contemplates that actual EBA costs should reflect adjustments the PSC has ordered in a general rate case.

Here, recognizing the importance of these programs, the benefits they bring to Utah ratepayers with respect to EBA-recoverable net power costs, and the inclusion of certain EIM administrative costs that already exist in the EBA, the PSC declines to adopt UAE's proposed adjustment. We do not wish to disincentivize RMP from capitalizing on opportunities to lower

⁵⁰ Rebuttal Test. of J. Painter at 2:24-25.

net power costs when they arise. However, the PSC reiterates it disfavors inclusion of new costs that have not been vetted in a general rate case, and it will carefully scrutinize future requests to include new costs in the EBA.

6. Order

The PSC approves the 2021 EBAC with the adjustments specifically approved in this Order. Specifically, the PSC approves the amount that RMP seeks in the Application with the following negative adjustments: (1) \$189,552 to correct for RMP's carrying charge error in the Application; (2) \$785 to correct RMP's PTC calculation with respect to net negative generation at TB Flats; and (3) the adjustment DPU recommends with respect to the Craig Outage as stated on page 28 of the confidential report Daymark Energy Advisors prepared for the DPU and filed with the PSC on September 21, 2022 in this docket.

DATED at Salt Lake City, Utah, January 9, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#326592

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on January 9, 2023, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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