

**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

Application of Rocky Mountain Power  
for a Deferred Accounting Order  
Regarding Insurance Costs

DOCKET NO. 23-035-40

**DIRECT TESTIMONY**

**OF**

**KEVIN C. HIGGINS**

**On Behalf of**

**Utah Association of Energy Users**

**November 29, 2023**

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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 an 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 47 dockets before the Commission on electricity and  
30 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 235 other  
34 proceedings on the subjects of utility rates and regulatory policy before state utility  
35 regulators in Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois,  
36 Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New  
37 Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, North Carolina,  
38 Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, and  
39 Wyoming. I have also filed affidavits in proceedings before the Federal Energy  
40 Regulatory Commission and prepared expert reports in state and federal court  
41 proceedings involving utility matters.

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

43 A. My testimony addresses the request by Rocky Mountain Power (“RMP” or “the  
44 Company”) for a deferred accounting order authorizing the Company to record a  
45 regulatory asset associated with incremental costs from increased insurance premiums.

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

48 A. Based on the information currently available, UAE does not oppose RMP's request for a  
49 deferred accounting order authorizing the Company to record a regulatory asset  
50 associated with incremental costs from increased excess liability insurance premiums,  
51 subject to certain caveats, recognizing that a deferred accounting order does not  
52 guarantee recovery of the deferred amount. The specific amount that is ultimately  
53 recoverable should be determined in RMP's next general rate case and should be based  
54 on a Commission finding that the amount of costs being allocated to customers is just and  
55 reasonable. Such a finding should consider all relevant factors, including the proper  
56 allocation of costs to PacifiCorp from its parent Berkshire Hathaway Energy Company,  
57 as well as the extent to which the increase in insurance premiums may be attributable to  
58 costs caused by the Company, such as damages awards in which PacifiCorp was found to  
59 be grossly negligent and reckless.

60

61 **II. RMP DEFERRAL REQUEST**

62 **Q. PLEASE SUMMARIZE RMP'S REQUEST FOR A DEFERRED ACCOUNTING**  
63 **ORDER PROPOSED TO INCLUDE ANY NEW COST ITEMS IN ITS EBA**  
64 **FILING.**

65 A. RMP reports that its premiums for excess liability insurance have increased to an  
66 extraordinary extent. Currently, Utah rates recover this jurisdiction's allocated share of  
67 \$10.5 million in total-Company excess liability insurance premiums, based on rates

68 established in RMP's 2020 general rate case, Docket No. 20-035-04.<sup>1</sup> Total Company  
69 excess liability insurance premiums in the year ended August 14, 2023 were \$32 million.  
70 However, RMP reports that the premiums in its most recent policy renewal for excess  
71 liability insurance for the policy period beginning August 15, 2023 increased to \$125  
72 million.<sup>2</sup> In light of this extraordinary increase in its excess liability insurance premiums,  
73 RMP is requesting to defer the difference between Utah's allocated share of the cost of  
74 the new higher premiums (approximately \$55.5 million) and its allocated share of excess  
75 liability insurance premiums in current rates (approximately \$4.6 million). RMP states  
76 that non-recovery of the \$50 million excess liability insurance cost increase would lower  
77 the Company's earned return on equity in Utah by almost 100 basis points.<sup>3</sup>

78 **Q. WHAT IS YOUR RESPONSE TO RMP'S REQUEST?**

79 A. Based on the information currently available, UAE does not oppose RMP's request to  
80 defer the difference between Utah's allocated share of the cost of the new excess liability  
81 premiums and Utah's allocated share of excess liability insurance premiums in current  
82 rates, subject to certain caveats.

83 **Q. WHAT IS YOUR UNDERSTANDING OF THE CRITERIA FOR DEFERRED**  
84 **ACCOUNTING IN UTAH?**

85 A. It is my understanding that in Utah, the rule against retroactive ratemaking generally  
86 precludes the ratemaking process from being influenced by actual costs or revenues that  
87 deviate from rate case estimates; consequently, deferred accounting outside a general rate  
88 case (other than fuel adjustor mechanisms) is generally limited to situations in which

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<sup>1</sup> Direct Testimony of Shelly E. McCoy, lines 46-50.

<sup>2</sup> *Id.*, lines 64-67.

<sup>3</sup> *Id.*, lines 85-92.

89 changes in cost or revenues are unforeseen and extraordinary and which are not caused  
90 by the utility.<sup>4</sup> UAE generally opposes deferred accounting requests that fail to meet  
91 these criteria, as most requests for deferred accounting are attempts to engage in single-  
92 issue ratemaking, which, absent a compelling public interest, is contrary to sound  
93 ratemaking practice. However, based on my review of the Company's filing and its  
94 responses to discovery, I do not dispute RMP's characterization of the increase in its  
95 excess liability insurance premiums as material, extraordinary, and unforeseen.

96 **Q. SHOULD ANY CAVEATS BE INCLUDED IN A COMMISSION ORDER**  
97 **AUTHORIZING A DEFERRAL IN THIS CASE?**

98 A. Yes. A deferred accounting order does not guarantee recovery of the deferred amount.  
99 The specific amount that is ultimately recoverable should be determined in RMP's next  
100 general rate case.

101 **Q. ARE YOU AWARE OF ANY SPECIAL CIRCUMSTANCES THAT SHOULD BE**  
102 **CONSIDERED IN THE COMMISSION'S ULTIMATE DETERMINATION OF**  
103 **THE AMOUNT OF THE DEFERRAL THAT IS RECOVERED IN RATES?**

104 A. Yes. I am aware that in June 2023, an Oregon jury awarded approximately \$90 million to  
105 seventeen plaintiffs who sued PacifiCorp for losses related to wildfires that occurred in  
106 September 2020, finding the Company to be grossly negligent and reckless in relation to  
107 those fires.<sup>5</sup> The jury also found that a broader class of people can bring claims against  
108 PacifiCorp for the fires in a future court proceeding. PacifiCorp has been named as a

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<sup>4</sup> See *Utah Department of Business Regulation v. Utah Public Service Commission*, 720 P.2d 420 (Utah 1986); *MCI Telecommunications Corporation v. Utah Public Service Commission*, 840 P.2d 765, 771-772 (Utah 1992); Report and Order, Utah PSC Docket Nos. 06-035-163, 07-035-04, 07-035-14, at 15 (January 3, 2008); Report and Order, Utah PSC Docket No. 18-035-48.

<sup>5</sup> Circuit Court of the State of Oregon, County of Multnomah, Case No. 20CV33885.

109 defendant in other lawsuits seeking damages from wildfires allegedly caused by the  
110 Company. It is not clear to what extent, if any, the jury verdict or the other litigation  
111 against PacifiCorp influenced the size of the premiums the Company is being required to  
112 pay for excess liability insurance coverage. I believe it is reasonable for this topic to be  
113 investigated in the Company's next general rate case.

114 The final amount of the increased insurance cost that is recoverable from  
115 customers should be based on a Commission finding that the amount of costs being  
116 allocated to customers is just and reasonable. Such a finding should consider all relevant  
117 factors, including the proper allocation of costs to PacifiCorp from its parent Berkshire  
118 Hathaway Energy Company, as well as the extent to which the increase in insurance  
119 premiums may have been caused by PacifiCorp, such as the damages award in which  
120 PacifiCorp was found to be grossly negligent and reckless.

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

122 **A.** Yes, it does.