

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION OF ROCKY
MOUNTAIN POWER FOR A DEFERRED
ACCOUNTING ORDER REGARDING INSURANCE
COSTS

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DOCKET No. 23-035-40
Exhibit No. DPU 1.0 DIR
Direct Testimony of
Jeffrey S. Einfeldt

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

Direct Testimony of

Jeffrey S. Einfeldt

November 29, 2023

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

2 A. My name is Jeffrey S. Einfeldt. My business address is 160 East 300 South, Salt
3 Lake City, Utah 84114. I am a Utility Technical Consultant with the Division of
4 Public Utilities (“Division”).

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A. The Division.

7 **Q. PLEASE DESCRIBE YOUR POSITION AND DUTIES WITH THE DIVISION.**

8 A. As a Utility Technical Consultant I examine public utility financial data and review
9 filings for compliance with existing programs, applications for rate increases, and
10 various other matters. I research, analyze, document, and assist in establishing
11 regulatory positions on a variety of regulatory matters. In addition, I assist in case
12 preparation by analyzing the testimony and other filings of other parties,
13 providing and assisting in the Division’s preparation of written and sworn
14 testimony in hearings before the Public Service Commission of Utah
15 (“Commission”), and testifying on certain matters before the Commission.

16 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY FOR THIS**
17 **DOCKET.**

18 A. The purpose of my testimony is to present the Division’s position regarding
19 Rocky Mountain Power’s (“RMP” or “Company”) Application for a Deferred
20 Accounting Order Regarding Insurance Costs (“Application”).

21 **Q. WHY HAS RMP FILED THIS APPLICATION?**

22 A. RMP represents that it is seeking authorization from the Commission “to defer
23 the incremental costs associated with [sic] Company’s insurance coverage”
24 related to certain wildfire liability risk and seeking an opportunity to recover, in a
25 separate proceeding, those costs in excess of related costs already in rates.¹
26 RMP also seeks authorization to record those deferred costs as a regulatory
27 asset.² The Company alleges these costs substantially increased in August
28 2023.³

29 **Q. WHAT AMOUNT IS RMP SEEKING TO DEFER?**

30 A. RMP is not providing a cap on the amount it seeks to defer but rather seeks to
31 defer “[t]he costs identified in this application [which] would account for the
32 incremental cost of acquiring coverage for the policy periods commencing August
33 15, 2023 or later.”⁴ RMP estimates these increased incremental insurance costs
34 at approximately \$115 million, total company, with Utah’s portion of the increase
35 being approximately \$51 million based on an allocation factor of 44.4 percent.⁵

36 **Q. BRIEFLY, WHAT WOULD A DEFERRED ACCOUNTING ORDER ALLOW THE**
37 **COMPANY TO DO?**

38 A deferred accounting order allows the Company to defer and track costs for a
39 particular expense and seek recovery of those costs in a future regulatory

¹ *Application of Rocky Mountain Power for a Deferred Accounting Order Regarding Insurance Costs*, Docket No. 23-035-40 at 3.

² *Id.*

³ *Id.*

⁴ *Id.* RMP estimates total commercial insurance costs are approximately \$125 million (total company). Current rates include approximately \$10 million, which would leave an estimated unrecovered balance of \$115 million.

⁵ Direct Test. of Shelley E. McCoy at 5.

40 proceeding. If the Commission grants RMP's application, the order would allow
41 RMP to record costs associated with increased insurance premiums in certain
42 accounts and give RMP the opportunity to recover in a separate proceeding
43 amounts that would normally be unrecoverable by granting an exception to the
44 general prohibition against single item ratemaking and retroactive ratemaking.⁶

45 **Q. WHAT IS THE DIVISION'S POSITION REGARDING RMP'S REQUEST FOR**
46 **AUTHORIZATION OF A DEFERRED ACCOUNTING ORDER FOR THE**
47 **INSURANCE COST INCREASE?**

48 A. The Division opposes RMP's request for deferred accounting as explained in
49 more detail below. Retroactive ratemaking is a tool that allows recovery of
50 extraordinary items in limited circumstances where other regulatory tools do not
51 exist to allow reasonable recovery.⁷ In the case of increases in insurance rates,
52 the normal ratemaking tools would allow RMP to seek recovery of these
53 expenses. Filing a general rate case with interim rates would have allowed the
54 collection of prudently incurred expenses. It would also have allowed evaluation
55 of other items that may have changed since rates were last set.

56 Tools that are an exception to normal ratemaking rules do not exist as an option
57 in a utility's toolbox for timing rates and ensuring recovery. Rather, they exist as
58 an exception when traditional ratemaking tools cannot address extraordinary and

⁶ See *Application of Rocky Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans*, Docket No. 18-035-48 (Order, issued May 22, 2019), at 3-4; *MCI Telecomms. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765, 770 (Utah 1992).

⁷ For example, one court has noted that the exception to the ban on retroactive ratemaking applies when an extraordinary expense "could otherwise never be recovered in rates." *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 869 A.2d 1144, 1153 n.24 (Pa. Commw. Ct. 2005)

59 unforeseen changes to the utility's business.⁸ The Division recommends the
60 Commission deny RMP's request for a deferred accounting order in this docket.

61 **Q. IS IT UNFAIR TO THE UTILITY TO PREVENT DEFERRAL OF THE**
62 **INSURANCE EXPENSES IN THIS CASE?**

63 A. No. The Company could have used normal ratemaking mechanisms for recovery
64 as these increased expenses became known. RMP could still do so. RMP could
65 have filed a general rate case as soon as it learned of the insurance rate
66 increase. In fact, it knew of the likelihood of significant increases before the new
67 insurance rates took effect. In other words, it had time to consider options for
68 ensuring current rates reflect current costs. A general rate case is a far superior
69 forum and process to address the increase in insurance expense RMP is seeking
70 to recover and provides the option to request interim rates.

71 **Q. DID THE DIVISION CONSIDER THE TRADITIONAL ELEMENTS EVALUATED**
72 **FOR EXCEPTIONS TO THE RULE AGAINST RETROACTIVE RATEMAKING?**

73 A. Yes. The Commission should not reach this question, as better tools exist.
74 Nevertheless, the Division reviewed the Application, past orders addressing
75 requests for deferred accounting treatment, and relevant financial information,
76 and had internal discussions about the issues. The Division evaluated the
77 insurance increase based on criteria such as foreseeability, materiality, whether
78 the increase was extraordinary in nature, the unforeseeable and extraordinary
79 effect upon the Company's costs and revenues, and whether the event is

⁸ See *MCI Telecomms. Corp. v. Pub. Serv. Comm'n*, 840 P.2d 765, 770-72 (Utah 1992).

80 specific, unusual, unique, infrequent, not ongoing, and not part of normal
81 operations.

82 As part of this analysis, the Division reviewed the total company estimated
83 amount and the Company's estimated Utah allocated portion, recognizing that
84 these numbers represent only estimates and actual amounts could be higher or
85 lower. The Division compared these estimated amounts to information the
86 Company provided in its Results of Operations for the year ending December 31,
87 2022 ("2022 Results of Operations").⁹ The 2022 Results of Operations presented
88 Company financial information generally, including total revenues, and net
89 revenues after subtracting operating and other expenses (generally referred to as
90 net income).

91 Based on the financial information reported in the 2022 Results of Operations,
92 the estimated \$115 million total company insurance increase represents 2.2% to
93 2.3% of gross revenues.¹⁰ The Company's estimated Utah allocation of \$51
94 million represents 2.15% to 2.35% of gross revenues allocated to Utah.¹¹

95 Compared to net revenue recorded in the 2022 Results of Operations,¹² the
96 estimated insurance increase represents between 8.75% and 9.15% of total
97 company net revenue. Based on the Company's suggested Utah allocation, the

⁹ *PacifiCorp's Financial Reports*, Docket No. 23-035-12, Rocky Mountain Power's December 2022 Results of Operations ("2022 ROO").

¹⁰ 2022 ROO at 1.1, line 6.

¹¹ *Id.*

¹² *Id.* at 1.1, line 33.

98 insurance increase ranges between 9.35% and 11.25% of Utah allocated net
99 revenue.¹³

100 The Division believes the amount in question is not insignificant, but it does not
101 by itself place the Company in jeopardy, create a net financial loss position, or
102 create a going concern condition. In fact, if the situation were so dire, a general
103 rate case seeking an interim rate change would help alleviate such concerns.

104 The Division's position is the estimated insurance increase is not extraordinary
105 and is likely to continue as the "new normal." While it represents a large increase
106 in one of the Company's expense items, it is an ordinary cost increase based on
107 market conditions that have changed. One of the benefits of a general rate case
108 is that it allows evaluation of all cost increases and decreases. Between general
109 rate cases, hundreds of cost items change multiple times. Merely being a large
110 increase does not render one of them extraordinary. The Company's case
111 representing that the increases are extraordinary is insufficiently developed and
112 fails to warrant the Commission ordering deferred accounting treatment in this
113 instance.

114 As for whether the insurance increase was unforeseen or unforeseeable, a series
115 of notable wildfires in California since 2017 caused significant disruption to
116 California utilities and their ratepayers. Oregon experienced wildfires in
117 September 2020 leading to lawsuits filed against PacifiCorp in September 2020.

¹³ *Id.*

118 A jury verdict, holding PacifiCorp liable for causing some of those wildfires was
119 reached in June 2023,¹⁴ and is likely influencing the insurance cost rise that is
120 the subject of this request for a deferred accounting order. The Company's
121 insurance costs also rose in prior years. The Company had notice well in
122 advance of the August policy dates that this year's rates would rise even higher.
123 While one could not have guessed in 2020 that rates would rise to where they
124 are now, one could see them rising in the years after 2020. And the Company's
125 knowledge in advance of the August rates taking effect renders the increases
126 foreseeable for purposes of evaluating a deferral. This is because deferrals are
127 meant to be used when other avenues provide no relief. The rise in insurance
128 costs was foreseen by the Company before it took effect. In fact, the Company
129 requested a technical conference before August to discuss this topic, among
130 others.¹⁵

131 **Q. ARE OTHER ISSUES NOTEWORTHY IN DETERMINING WHETHER THE**
132 **INCREASED COSTS ARE RECOVERABLE FROM RATEPAYERS?**

133 A. Yes. Additional issues are significant in determining the prudence of the
134 estimated insurance cost increase and whether the full amount should be
135 allowed to be recovered from ratepayers in this or another proceeding. This
136 includes the following:

¹⁴ *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah Cnty., June 12, 2023).

¹⁵ Rocky Mountain Power's Executive Meeting Request, Docket No. 23-035-34, July 25, 2023.

- 137 • Whether it is appropriate for Utah ratepayers to be responsible for
138 paying wildfire losses incurred outside of Utah, particularly on
139 distribution resources that don't serve Utah.

- 140 • The determination of how much of the increase is directly related to
141 legal liability resulting from Oregon wildfires in 2020 for which the
142 Company was found liable.

- 143 • The determination of any perceived negligence on the part of the
144 Company related to the insurance increase.

- 145 • An appropriate allocation between states or jurisdictions, accounting
146 for differences in property values, population densities in wildfire risk
147 areas, forest management practices, propensity for differences in jury
148 awards, and the relative amount of coverage for local distribution
149 resources versus system resources serving multiple states.

- 150 • Exploration of alternative strategies to mitigate wildfire risk rather than
151 acquiring traditional insurance.

152 The above issues have not been adequately addressed in this docket and are
153 more appropriately addressed in a general rate case where they can be more
154 fully vetted and compared with other issues affecting rates generally. While a

155 deferral does not indicate prudence, it has been suggested that it is an early
156 indication of recoverability,¹⁶ which should not be given here.

157 **Q. IN SUMMARY, WHAT IS THE DIVISION'S POSITION IN THIS MATTER?**

158 A. The Division recommends the Commission deny RMP's request for a deferred
159 accounting order to record the current insurance increase for future recovery. A
160 general rate case filing is a tool available to the Company that would not preclude
161 full recovery of prudently incurred insurance costs. While the increase was large,
162 it was also foreseen before taking effect. The increase in insurance costs is also
163 likely to remain elevated for the foreseeable future. This is likely not a one-time
164 spike with a return to historical levels. RMP has other options available to seek
165 relief from increased costs, such as filing a general rate case and seeking interim
166 rates in that proceeding. Other elements, including geographical inequities, RMP
167 negligence, allocation of increased insurance costs between ratepayers and
168 shareholders, systemic changes in the wildfire insurance industry, and other
169 wildfire mitigation strategies available to RMP have not been adequately
170 explored. Granting a deferred accounting order in this matter would shift risk to
171 ratepayers and ignore that other items in the Company's business might offset
172 these expenses. The Division asserts that granting the deferred accounting order
173 may diminish RMP's incentives to effectively manage wildfire risks.

¹⁶ *Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order to Defer the Costs of Loans Made to Grid West, the Regional Transmission Organization*, Docket No. 06-035-163, (Report and Order, issued Jan. 3, 2008) at 16-17.

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

175 A. Yes.