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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Application of Rocky)
Mountain Power for a)
Deferred Accounting Order)
Regarding Insurance Costs.)
) DOCKET NO. 23-035-40
)
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Public Hearing
Taken on Wednesday, January 17, 2024
At 8:59 a.m. MT

At Heber M. Wells Building
160 East 300 South
Room 403
Salt Lake City, Utah 84111

Reported by: Brooke Simms, RPR, CCR, CSR

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A P P E A R A N C E S

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E X H I B I T S

EXHIBIT	DESCRIPTION	MRKD/ADMTD
RMP Exhibit	Direct and Rebuttal Testimony of Shelley E. McCoy	9
RMP Exhibit	Direct and Rebuttal Testimony of Mariya V. Coleman	68
RMP Cross Exhibit 1	DPU's Response to RMP's 1st Set of Data Requests 1/10/24	74 100
RMP Cross Exhibit 2	Testimony of David T. Thomson 9/10/07	78 100
DPU Exhibit	Direct and Surrebuttal Testimony of Jeffrey S. Einfeldt	70
DPU Cross Exhibit 1	Selections of BHE's 10-Q for Quarterly Period Ending on 3/31/23	47 50
OCS Exhibit	Direct and Surrebuttal Testimony of Alyson Anderson	108
UAE Exhibit	Direct Testimony of Kevin C. Higgins	113

1 P R O C E E D I N G S

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3 COMMISSIONER CLARK: My name is Commissioner
4 David Clark, and let me introduce the other people
5 seated with me. To my far left is Commissioner John
6 Harvey. Between us is Administrative Law Judge Michael
7 Hammer.

8 This is the time appointed for hearing in
9 Docket Number 23-035-40 in the matter of the application
10 of Rocky Mountain Power for a deferred accounting order
11 regarding insurance costs.

12 Some of you know that our Chair Commissioner
13 Thad LeVar resigned effective January 5th, 2024. So at
14 this point in time there are two commissioners serving
15 on the Commission. That's Commissioner Harvey and
16 myself, and we've asked Judge Hammer to be the presiding
17 officer at this proceeding.

18 So I'll now figuratively turn the gavel over
19 to Judge Hammer.

20 PRESIDING OFFICER: We'll begin with
21 appearances for Rocky Mountain Power.

22 MS. McDOWELL: Good morning, Judge Hammer and
23 Commissioners. I'm Katherine McDowell here on behalf of
24 Rocky Mountain Power.

25 MS. SCARSELLA: Carla Scarsella on behalf of

1 Rocky Mountain Power.

2 COMMISSIONER CLARK: And I'm -- I'm sorry, but
3 I'm having trouble hearing both of you. So you might
4 want to pull the mikes closer and make sure they're on.
5 Thank you.

6 MS. McDOWELL: It was not on. Shall I repeat
7 myself?

8 PRESIDING OFFICER: Yep.

9 MS. McDOWELL: Okay. Good morning, Judge
10 Hammer and Commissioners. I'm Katherine McDowell here
11 on behalf of Rocky Mountain Power.

12 MS. SCARSELLA: Carla Scarsella on behalf of
13 Rocky Mountain Power.

14 PRESIDING OFFICER: For the Division of Public
15 Utilities?

16 MS. SCHMID: Patricia E. Schmid and Patrick
17 Grecu with the Utah Division -- with the Utah Attorney
18 General's office for the Division of Public Utilities.
19 Thank you.

20 PRESIDING OFFICER: For the Office of Consumer
21 Services?

22 MR. MOORE: Robert Moore with the Attorney
23 General's Office. I'm representing the Office of
24 Consumer Services. Our witness today is Alyson
25 Anderson.

1 PRESIDING OFFICER: And for the Utah
2 Association of Energy Users?

3 MR. RUSSELL: Yes. Good morning. Good
4 morning. On behalf of UAE, Phillip Russell.

5 PRESIDING OFFICER: Thank you. Before we
6 begin, I was informed shortly before the hearing started
7 that we are having trouble with our audio. We will all
8 hear each other in this room just fine, but our
9 streaming isn't picking up the audio from the mikes in
10 front of you. So to the extent everyone can project his
11 or her voices, that would be appreciated.

12 Are there any preliminary matters before we
13 commence with testimony?

14 Okay. Then I will ask Ms. McDowell to call
15 her first witness.

16 MS. McDOWELL: Thank you, Judge. We call
17 Shelley McCoy.

18 PRESIDING OFFICER: Ms. McCoy, do you swear to
19 tell the truth?

20 MS. McCOY: I do.

21 PRESIDING OFFICER: Thank you.

22 Go ahead, Ms. McDowell.

23 MS. McDOWELL: Thank you.

24 SHELLEY McCOY

25 was sworn and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. McDOWELL:

3 Q. Good morning, Ms. McCoy.

4 A. Good morning.

5 Q. Ms. McCoy, can you state your name and spell
6 it for the record.

7 A. Okay. Shelley McCoy, S-h-e-l-l-e-y M-c-C-o-y.

8 Q. Ms. McCoy, how are you employed?

9 A. I am the director of revenue requirement for
10 PacifiCorp.

11 Q. In that capacity have you prepared testimony
12 for this proceeding?

13 A. Yes, I have.

14 Q. Is that testimony your direct and rebuttal
15 testimony?

16 A. Yes.

17 Q. Do you have any changes or corrections to your
18 testimony?

19 A. Yes. In my direct testimony on page 3, line
20 49, the sentence that begins "these were."

21 "These were the" -- "projected" instead of
22 "actual" -- "insurance premiums to be paid on the most
23 recent renewal."

24 Q. Do you have any other changes or corrections
25 to your testimony?

1 A. I do not.

2 MS. McDOWELL: We'd offer Ms. McCoy's direct
3 and rebuttal testimony at this time.

4 PRESIDING OFFICER: It's admitted.

5 (Direct and Rebuttal Testimony of Shelley
6 E. McCoy admitted into evidence.)

7 MS. McDOWELL: Thank you.

8 Q. (BY MS. McDOWELL) Ms. McCoy, have you
9 prepared a summary of your testimony?

10 A. Yes, I have.

11 Q. Please proceed.

12 A. Good morning, Commissioner Clark and
13 Commissioner Harvey. In this case Rocky Mountain Power
14 seeks deferred accounting for the increase in its excess
15 liability insurance premium expenses since the
16 Commission last set the company's rates in its 2020
17 general rate case. The Commission should allow deferred
18 accounting because the evidence demonstrates that the
19 increase was unforeseeable and the impact on the
20 company's earnings is material and extraordinary.

21 In the Company's last rate case in 2020, the
22 Commission authorized inclusion of \$10.5 million
23 total-Company for excess liability commercial insurance
24 expense. This was based on the best information
25 available at that time, which was the projected cost of

1 the insurance renewal in August 2020.

2 While the Company's insurance premiums have
3 historically been fairly stable year over year, in
4 August 2023, the Company's excess liability insurance
5 premiums increased by \$112.1 million total-Company, or
6 \$49.2 million Utah-allocated. Compared to costs in base
7 rates, this 1,067 percent increase was not foreseeable
8 at the time of the Company's last rate case in 2020.
9 While the Company expected some cost escalation, it did
10 not anticipate cost increases of this magnitude.

11 This unforeseeable increase in the Company's
12 excess liability insurance premiums has extraordinary
13 impact on the Company's earnings. The \$49.2 million
14 Utah-allocated increase in excess liability insurance
15 premium expenses has an impact of more than 90 basis
16 points on the Company's return on equity.

17 In previous cases, the Commission has approved
18 deferral of amounts with lesser impact than the excess
19 liability insurance premiums that the Company seeks to
20 defer here. For example, in a prior case involving
21 costs incurred from flooding in the Powerdale
22 hydroelectric facility, the Commission approved deferral
23 of \$8.9 million in unappreciated plant expense and
24 \$6.3 million in decommissioning costs, both
25 total-Company.

1 Similarly, the Commission approved deferred
2 accounting and a refund of \$61 million, Utah-allocated,
3 in excess federal income tax resulting from the Tax Cuts
4 and Jobs Act of 2018, or TCJA. To put the TCJA deferral
5 in context, the Company reviewed its results of
6 operations report from December 2018, which showed that
7 the TCJA deferral was approximately 12.9 percent of
8 Utah's operating revenue for a return.

9 By comparison, the insurance premium expenses
10 that the Company seeks to defer in this docket would be
11 approximately 13.7 percent of Utah's operating revenue
12 for return. The amount sought to be deferred in this
13 case is clearly extraordinary under these precedents.

14 In this case the Division of Public Utilities
15 argues that the Company's increased excess liability
16 insurance premiums are ongoing and a new normal and,
17 therefore, are not extraordinary. While the Company
18 agrees that insurance premiums are likely to remain
19 elevated, that does not change the fact that the
20 increase in this expense since 2020 has been
21 extraordinary.

22 In addition, DPU's position here is
23 inconsistent with its testimony in the TCJA deferral,
24 where DPU supported deferring the excess revenue
25 resulting from the company's ongoing reduced tax rate.

1 In that case the Commission agreed with the DPU and
2 approved the deferral.

3 DPU also argues that the Company can recover
4 these costs through a rates case and, for that reason,
5 the Commission should deny the application for a
6 deferral. However, contrary to the DPU's position, the
7 Company is not required to seek recovery of these costs
8 only through a general rate case. Rather, under the
9 Utah Supreme Court's decision in the MCI
10 Telecommunications Corporation, the Commission
11 recognized -- recognizes an exception to the normal
12 prohibitions on retroactive and single-issue ratemaking
13 for unforeseeable and extraordinary costs, allowing
14 deferrals to permit potential recovery in a later rate
15 proceeding. The Company has demonstrated compliance
16 with the MCI standards in this case.

17 Moreover, a general rate case would not be an
18 adequate remedy for these unforeseeable and
19 extraordinary expenses. Given the time lines involved,
20 most or all of the 2023-2024 insurance cost increase
21 could not be recovered through a general rate case
22 filing. This would be the case, even if the Company
23 requested interim rates, because by the time that the
24 exact insurance premium expenses were known and
25 measurable, it was too late to obtain full cost recovery

1 through a general rate case filing and interim rates
2 since that process itself requires months to complete.

3 Finally, DPU and the Office of Consumer
4 Services argues that the Commission should not approve
5 deferred accounting because the Company has not shown
6 that the expenses would be recoverable in a future
7 proceeding. Those intervenors assert that some portion
8 of the increase in excess liability insurance premium
9 expenses may have resulted from Company actions that DPU
10 and OCS consider imprudent.

11 To approve a deferral, however, the Commission
12 requires only that a utility demonstrate that the
13 expenses are of a type that may be eligible for a rate
14 recovery in a future proceeding, pending a demonstration
15 of prudence in that future proceeding. The excess
16 liability insurance premium expenses at issue in this
17 case satisfy this requirement because the Commission has
18 historically included these expenses in the Company's
19 revenue requirement.

20 The Company acknowledges that when it seeks
21 recovery of these costs, it will bear the burden to
22 demonstrate that the costs were prudently incurred. The
23 Company intends to file a general rate case in Utah
24 later this year, and in that proceeding, the Company
25 will provide evidence supporting the prudence of these

1 expenses.

2 However, in the current proceeding, the
3 Company seeks only an order approving deferred
4 accounting of its increased insurance expenses. The
5 Company's plan to file a rate case in 2024 also
6 addresses DPU's concern that the deferral is open-ended
7 and could remain pending for the foreseeable future.
8 The Company proposes that the deferral remain in place
9 only until the Company's increased insurance costs are
10 reflected in base rates.

11 The Company -- excuse me -- the Commission
12 should approve the Company's application because the
13 Company has shown that the increase in its insurance
14 expenses was unforeseeable at the time of the last rate
15 case, and the increase has an extraordinary impact on
16 the Company's earnings.

17 This completes my summary. Thank you.

18 MS. McDOWELL: Thank you, Ms. McCoy.

19 Ms. McCoy is available for cross-examination
20 and Commission questions.

21 PRESIDING OFFICER: Ms. Schmid?

22 MS. SCHMID: Yes.

23 CROSS-EXAMINATION

24 BY MS. SCHMID:

25 Q. Good morning. How are you?

1 A. Good morning. Good. Thank you.

2 Q. Did I miss the part in your testimony that the
3 Company was going to file a rate case in 2024?

4 A. No. That was not included in my testimony.

5 Q. You also mentioned a large increase in the
6 insurance rates, and you said, subject to check, that
7 there was a 1,764 percent increase; is that right?

8 A. Subject to check. But if you could point me
9 to my testimony where I said it, that would be helpful.

10 Q. If we look at your rebuttal -- actually,
11 this -- that probably was in Ms. Coleman's. Did you
12 read her testimony?

13 A. I did.

14 Q. So if you look at her rebuttal testimony at
15 line 6164 where she talks about increased costs, do you
16 see the 1,764 number?

17 A. I do. She's referring to the increase over
18 the time period from 2019 to 2023.

19 Q. Do you know what the increase is from 2022 to
20 2023 and 2023 to 2024 in terms of a percentage?

21 A. I do not. That's probably better directed at
22 Ms. Coleman.

23 Q. I will ask her those.

24 You also mentioned the MCI case, and you
25 mentioned some prior cases in which the Commission

1 issued a deferral accounting order for RMP. Do you
2 believe -- or sorry. Is it true that the number or the
3 expense or the cost being sought to defer is not the
4 only test for whether or not a deferral account should
5 be allowed?

6 A. It's my understanding that the amount should
7 be unforeseeable and extraordinary.

8 Q. Coming back to the MCI case and -- and to your
9 testimony, is it -- do you agree that the test is not
10 whether expenses turned out to be greater or less than
11 those previously estimated?

12 A. As far as determining the -- whether they're
13 extraordinary?

14 Q. And whether or not they're foreseeable.

15 A. Okay. Could you rephrase the question,
16 please.

17 Q. Of course. Is the fact that an expense or a
18 cost was greater than those projected in the past the
19 only test?

20 A. Oh, whether it's greater? No. Again, the --
21 the amount the Company seeks to defer needs to be
22 extraordinary and unforeseeable, and so have an
23 extraordinary impact on earnings, for instance.

24 Q. Is a deferred accounting order -- do you agree
25 that a deferred accounting order is not appropriate for

1 just a misforecast?

2 A. Again, it's not just a misforecast. It's an
3 extraordinary material amount.

4 Q. And so if the event is foreseeable, it doesn't
5 qualify; is that right?

6 A. Correct. It needs to be -- it needs to be
7 unforeseen and extraordinary.

8 Q. Just one moment.

9 So in your summary, you talked about the
10 Company filing a rate case in 2024, and in your
11 testimony and in your summary, you talked about how
12 filing a general rate case would not give the Company
13 the relief it's sought, due in part to the time lines
14 required to prepare, file, and for the Commission to
15 issue an order in a rate case.

16 Is that a gross and perhaps oversimplified
17 summary?

18 A. Yes.

19 Q. Okay. Do you agree, however, that the Company
20 has filed updates to its general rate case in the past?

21 A. Could you provide me with an example?

22 Q. If you turn to the general rate case in 2020
23 and you look at the testimony of Ms. Steward and you
24 compare that to the testimony that was filed in the
25 Company's direct case, you will see in the rebuttal, I

1 believe approximately lines 74 through 100, that she
2 offers updated numbers.

3 Do you have means to disagree with that?

4 A. Oh, so let me rephrase --

5 Q. Okay.

6 A. -- phrase it and see if I'm understanding.

7 Q. Okay.

8 A. Are you asking if in rebuttal of a general
9 rate case if the Company can make updates to its case?

10 Q. That's a much better question.

11 A. Yes.

12 Q. That's a great question I should have asked.

13 A. Yes, I do agree that the Company has the
14 ability to propose updates to its rate case filing in
15 rebuttal.

16 Q. And do you agree that the Company has done
17 that in the past?

18 A. Yes.

19 Q. Okay. You also talked about interim rates not
20 being the answer. Do you agree, however, that there is
21 a 45-day time limit during which the Commission must
22 issue a decision on an interim rate request after that
23 rate request has been made?

24 A. I do agree, but it still doesn't take away the
25 preparation time for a rate case. In Utah, the first

1 step would be to make a test period filing to propose a
2 test -- a test period. And in this case, we would seek
3 a forecast test period in which parties could also file
4 testimony. And if there's not agreement, my
5 understanding, there would be a hearing on that matter
6 before the Company would prepare its rate case. If we
7 didn't take that step, it would mean preparing,
8 essentially, three versions of the rate case.

9 It takes months to prepare -- collect and
10 prepare all of the information. For instance, it's not
11 uncommon for us to have between 1,500 and 2,000 capital
12 projects in a rate case, and every one of those needs to
13 be evaluated for the appropriate depreciation expense
14 and also the appropriate tax treatment. There would be
15 updates to costs such as insurance premiums that we
16 would need to gather. There's testimony that needs to
17 be written to support the Company's positions and any
18 especially projected capital projects.

19 And then there's filing requirements, which,
20 my understanding, they're quite extensive in Utah in
21 ensuring that the Company is meeting all of those
22 requirements before we make the filing.

23 So, while, yes, interim rates are available to
24 the Company, it doesn't negate all of the work that goes
25 into preparing a rate case to file for those interim

1 rates.

2 Q. The Company prepares rate cases as part of its
3 general regulatory process; isn't that correct?

4 A. It -- it does but --

5 Q. That's -- that's all I'm asking.

6 Does the Company only have one rate case going
7 in the six states in which it operates -- and this is
8 PacifiCorp -- at a time?

9 A. No. We've had cases of multiple, but each
10 state is unique in its regulatory treatment of items.

11 Q. You just talked about the challenges that the
12 Company has in preparing a rate case and all the work
13 that has to be done. Your last -- Rocky Mountain
14 Power's last general rate case was in 2020; is that
15 right?

16 A. That is correct.

17 Q. And so Rocky Mountain Power's current rates
18 were set in 2020; is that right?

19 A. That is correct.

20 Q. Do your -- do Rocky Mountain Power's current
21 rates include enough personnel -- enough revenue for
22 personnel to file needed regulatory filings in each
23 state as needed?

24 A. I believe so.

25 Q. But you're saying -- okay. Never mind.

1 MS. SCHMID: Just -- if I could have just one
2 moment. Thank you.

3 Q. (BY MS. SCHMID) And going back to your
4 discussion of how long it takes to prepare a rate case
5 and the challenges there, do you wait until all numbers,
6 such as revenues and -- and costs, are final before you
7 start to prepare a rate case?

8 A. So the process of preparing a rate case is
9 built off of our results of operations, which we prepare
10 in Utah twice a year. It's based off of 12 months into
11 June, 12 months into December.

12 Q. And that's a long way of getting, perhaps, to
13 my answer. So if you could be more concise.

14 A. Sure. And so when we do build -- when we
15 prepare a rate case, while we'll start gathering some of
16 the data, such as forecasted capital projects, we do
17 build it off of the actual results for either June or
18 December historical periods.

19 Q. And you can provide updates to your rate case
20 filing; correct?

21 A. We can provide updates, but it is at the
22 Commission's discretion as to whether or not they
23 will -- they accept those updates.

24 Q. Can you give me an instance -- never mind.
25 Let's see.

1 MS. SCHMID: Those are all my questions.

2 Thank you.

3 PRESIDING OFFICER: Thank you, Ms. Schmid.

4 Mr. Moore?

5 MR. MOORE: The office has no questions.

6 Thank you.

7 PRESIDING OFFICER: Mr. Russell?

8 MR. RUSSELL: Just a few brief questions.

9 CROSS-EXAMINATION

10 BY MR. RUSSELL:

11 Q. Ms. McCoy, I'd like you to turn to page 10 of
12 your rebuttal testimony, if you would.

13 A. Okay. I'm there.

14 Q. I'm going to direct you in a moment to the --
15 the portion of your testimony starting at line 201 where
16 you provide your recommendation, but just as a kind of
17 overarching statement here, what I'm -- what I'm looking
18 for here is some specifics here about the relief that
19 the Company is seeking in this docket.

20 Starting at line 201 you state, "I recommend
21 the Commission approve the Company's application for a
22 deferred accounting order for its excess liability
23 insurance premiums for the 2023-2024 period."

24 And I'm -- I'm curious about what you mean by
25 the 2023-2024 period. Are you talking about policies

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1 that start in '23 and end in '24, or are you talking
2 about expenses that are incurred in either '23 or '24?

3 A. So that would be for policies that began with
4 the renewal period in August of '23 and would continue
5 until the updated premiums are included in base rates,
6 which is anticipated to be after '24.

7 Q. So are you seeking in this docket to include
8 costs that the Company may incur in the renewal period
9 starting in August of 2024?

10 A. That's a possibility, yeah.

11 Q. Okay. We, of course, don't have any numbers
12 about that.

13 A. Correct.

14 Q. And we don't know whether those costs will be
15 extraordinary at this point because we don't know what
16 they are; right?

17 A. Right.

18 Q. Okay. And one additional set of questions.
19 The next sentence here states, "The Company estimates
20 that its excess liability insurance costs are
21 approximately 122.6 million." You go on to calculate
22 the difference between that and the amount in rates.

23 A. Right.

24 Q. Why do we not have actual numbers for the
25 renewal period starting in August of 2023 yet?

1 A. So you'll -- you'll want to direct this
2 question to Ms. Coleman to confirm, but I think that
3 this number is probably the final number, but I would
4 really want her to respond to that --

5 Q. Okay.

6 A. -- question.

7 Q. Okay. I will -- I will await that -- that
8 opportunity then.

9 That's all I have for you. Thank you.

10 A. Okay.

11 PRESIDING OFFICER: Commissioner Harvey?

12 EXAMINATION

13 BY COMMISSIONER HARVEY:

14 Q. So some of these -- sorry. Some of these may
15 be for PacifiCorp's other witness, and just feel free to
16 let me know that.

17 A. Okay.

18 Q. I'm interested in finding out a little bit
19 more about the actual workings of these insurance
20 policies. I'm assuming they're certainly more
21 complicated than the one I have on my car, for instance,
22 the deductible and they pay up to the value of my car.

23 So to begin with, give me a sense of what type
24 of expenses these policies would cover.

25 A. Yeah. So you are correct. This question

1 really is better directed to Ms. Coleman --

2 Q. Okay.

3 A. -- who oversees this -- the process of
4 obtaining the insurance and knows it quite well.

5 You also are correct that it is much more
6 complex than our personal insurance. I've definitely
7 learned that over the years.

8 Q. Okay. So she's got a heads up.

9 A. Yeah.

10 Q. Okay. I'll skip those.

11 I don't remember if this was your testimony or
12 Ms. Coleman's, but there was discussion about the fact
13 that the policy is part of the larger policy for the
14 entire Berkshire Hathaway.

15 A. Yep. That's also Ms. Coleman.

16 Q. Okay.

17 (Reporter clarification.)

18 COMMISSIONER HARVEY: Yes. Sorry. I will try
19 to speak more clearly.

20 Q. (BY COMMISSIONER HARVEY) I have questions
21 about how the Commission might think about just and
22 reasonable rates with respect to a negligence issue. Is
23 that something you would address, or is that something
24 for Ms. Coleman or someone else?

25 A. I might be able to help you out with --

1 Q. All right.

2 A. I might be able to answer that. So --

3 Q. So my impression from reading the testimony is
4 that there are two basic drivers for the increased
5 costs. One is this trend, industry-wide, in the
6 west-wide, of an increased risk profile, but there's
7 also a loss history, and that's even mentioned in the
8 testimonies as --

9 A. Yes.

10 Q. Indeed. But that loss has a court case that
11 is saying that it was not just an act of god, that there
12 was -- that there's at least one court opinion that says
13 they think that your -- your company is at fault. And
14 so I'm wondering about, in terms of just and reasonable
15 rates, what type of factors should the Commission
16 consider when its talking about what costs should
17 PacifiCorp bear versus ratepayers bear?

18 A. So I think that this gets to a discussion of
19 what -- what are the drivers behind the increased
20 premiums, and, again, Ms. Coleman can better --

21 Q. Okay.

22 A. -- speak to that and whether or not any recent
23 verdicts have any --

24 Q. Okay.

25 A. -- impact on those premiums right now.

1 Q. So one more heads up. All right.

2 I'm just going over this, trying to parse them
3 between the two witnesses here.

4 So with respect to the deferred accounting
5 order itself, in the hypothetical that we issued it --
6 granted it, I guess would be the word -- what would that
7 do for PacifiCorp/Rocky Mountain Power? You've -- and
8 let me clarify what I mean. You've just finished
9 testifying that you're not asking us, as a Commission,
10 to determine any likelihood of recovery or anything
11 else. Your testimony is all you want us to do is
12 essentially give you permission to track these costs and
13 you'll come back at a later date?

14 A. Right. So an order authorizing the deferred
15 accounting would preserve our right to recover these
16 costs. Without that, it would then be retroactive
17 ratemaking, and that is prohibited. So the opportunity
18 to seek recovery of this increase would be lost without
19 the deferred accounting order.

20 Q. And so let me make sure I have this straight.
21 The time period from when you actually have to pay the
22 premium -- and it's unclear to me whether that's
23 happened or not. Maybe it has -- to when you would file
24 the rate case and potentially have interim rates -- it's
25 that missing gap that this --

1 A. Correct.

2 Q. -- would cover?

3 A. Correct.

4 Q. Okay. And it's PacifiCorp's position that the
5 Commission can do that, even if it makes no judgment at
6 all about whether there's any likelihood of recovery?

7 A. Yes. I'm not a legal expert, but yes.

8 Q. Okay. We -- so today there's been mention of
9 different ways that recovery could be decided, basically
10 through some type of a looking at it later in terms of
11 deferred accounting and then a different proceeding.
12 Can that proceeding be different than a rate case?

13 A. It could be, but where the Company intends to
14 file a rate case, that seems the most expedient way to
15 address it.

16 Q. Okay. And has PacifiCorp already started
17 preparing that rate case? And if yes, did they start
18 shortly after learning of these increased premiums?

19 A. We have started collecting data. The -- there
20 are multiple factors that go into consideration of
21 whether or not to file rate cases, including large
22 capital investments that are coming online and resetting
23 the level of net power costs in base rates. So these
24 are all factors that we look at and consider. The
25 insurance premiums would just be one additional factor

1 that we would look at.

2 Q. All right. I guess my concern -- and I'm
3 having a hard way to put this into a question, but we
4 obviously have a prohibition on single-issue ratemaking
5 for very sound policy reasons.

6 A. Mm-hmm.

7 Q. Because when we look at one thing changing,
8 we, by definition, aren't looking at everything else
9 that changes.

10 A. Sure.

11 Q. And the company's coming to us and saying, "We
12 have this huge change that we're worried about, and we
13 want to get it -- full recovery for it," but, by
14 definition, we won't be looking at anything else that
15 has changed if we grant this.

16 So every day that goes by where there's not a
17 rate case filed, it increases the time period where
18 you're only looking at the one change instead of the
19 whole company. Do you see that -- do you agree with
20 that or not? In terms of --

21 Well, do you agree that the longer PacifiCorp
22 takes to file a rate case, the bigger the gap is between
23 what's being asked to be recovered in that deferred
24 account and not knowing about all of these other changes
25 that are going on in the Company?

1 A. Sure. But I guess that -- that's an advantage
2 of seeking recovery of the deferral balance in a rate
3 case, because it allows for the wholistic view of the
4 Company.

5 Q. But only on a going forward basis; right?

6 A. Yes, but when we file a rate case, we also
7 include the historical base information. So that would
8 give some indication of the level of expenses overall
9 for the Company for --

10 Q. Absolutely.

11 A. Right. Okay.

12 Q. But -- but what I'm saying is we would set
13 rates at some point in the future, and all those things
14 are balanced, and that's going forward. But up until
15 that time, we have this deferred account, and it's not
16 being offset by anything, and part of the rate case
17 would be give us the rates going forward, but also let
18 us recover this big chunk of money; right?

19 A. Yeah. I guess I would say that -- that's why
20 the standards for the deferred accounting in Utah are
21 unforeseen and extraordinary so that, you know, we're
22 not seeking deferral of something, let's say, like,
23 \$5 million that would have a much smaller impact on
24 earnings, but it's intended to be items that are much
25 larger in magnitude, but I do understand your point.

1 Q. Okay. Thank you.

2 A. Yep.

3 Q. I think that's all of my questions for you.

4 Thank you.

5 A. Okay.

6 PRESIDING OFFICER: Commissioner Clark?

7 COMMISSIONER CLARK: Judge Hammer, I've got a
8 question. Did we offer Ms. McDowell an opportunity for
9 redirect?

10 PRESIDING OFFICER: I thought I would do that
11 after Commissioner questions.

12 COMMISSIONER CLARK: Okay. We usually do it
13 before, but since you haven't been here when the
14 Commission is here, you may not be aware of that.
15 You're used to conducting your own hearings. And,
16 frankly, Chair LeVar would sometimes forget as well, but
17 let me ask my questions and then -- and then let's have
18 the redirect. But maybe going forward, we can -- we
19 can --

20 PRESIDING OFFICER: Certainly, if that's your
21 preference.

22 COMMISSIONER CLARK: -- redirect, if that's
23 okay.

24 EXAMINATION

25 ///

1 BY COMMISSIONER CLARK:

2 Q. So my questions relate to page 4 of your
3 rebuttal, Ms. McCoy.

4 A. Okay. I'm there.

5 Q. And there you discuss the reported return on
6 equity of June 2023, and I think that's a Utah-specific
7 number. Am I right?

8 A. That is correct.

9 Q. And it comes out of the results of operations
10 report that you --

11 A. Correct.

12 Q. -- routinely file?

13 A. Mm-hmm.

14 Q. And that return on equity is about a little
15 more than 500 basis points below your authorized --
16 current authorized --

17 A. Correct.

18 Q. -- ROE?

19 (Reporter admonition on cross-talk.)

20 Q. (BY COMMISSIONER CLARK) Are you able to
21 identify the major drivers in that 500 basis point
22 difference?

23 A. Off the top of my head, I believe the -- the
24 biggest driver is increased net power costs.

25 Q. And would you have a sense of the degree to

1 which that -- that -- those increase in net power costs
2 is influencing this number?

3 A. Unfortunately, I don't.

4 Q. Does the Company receive or recover its net
5 power costs through a proceeding other than general rate
6 cases?

7 A. Yes, through the energy balancing account, or
8 EBA, we -- we receive revenues for the incremental
9 amount over and above what's in base rates.

10 Q. And -- and those costs are generally
11 pass-through costs -- right? -- that are recovered --

12 A. Correct.

13 Q. -- dollar for dollar?

14 A. Correct. Yep.

15 Q. So I'm struggling a little to understand how
16 they affect your ROE, as you've described it.

17 A. Oh, the net power costs. Because the results
18 of operations that's filed is utilizing what's in --
19 collected in base rates and our actual expenses. And so
20 this -- this ROE reflects what our -- what our earnings
21 are without those additional EBA revenues.

22 Q. Those are all my questions. Thank you.

23 A. Okay.

24 PRESIDING OFFICER: And I have none.

25 Ms. McDowell, any redirect?

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MS. McDOWELL: Thank you.

REDIRECT EXAMINATION

BY MS. McDOWELL:

Q. Ms. McCoy, there were a couple of answers that you started to give that -- where Ms. Schmid interrupted you before you were finished with your answers. So I just wanted to go back to those questions and see if you had anything additional to offer.

One was that question around whether the Company processes rate cases as a part of its normal regulatory function and whether the Company has sufficient staff to do that. Can you respond to that question and offer any additional information that you had intended to speak to?

A. Certainly. So we do frequently process multiple rate cases in a particular year. It's not uncommon for us to be working on two or three at a time, but each state is very unique in treatment of various items or rate base.

For instance, Washington recently went to a multiyear rate plan filing. So in that state, when we file a general rate case, it's for at least two years. Other states are a base period plus known and measurable changes. Other states, like Utah, will allow a forecast test period. So they're not interchangeable. While

1 some of the data and information is consistent among the
2 states, the -- the work is not duplicative. There's
3 some synergies but not completely overlapping.

4 Q. Is there anything about the timing of the
5 Company's next rate case in Utah that has been driven by
6 a lack of personnel or a lack of staffing?

7 A. No. Again, the timing of a rate case in Utah
8 is just like any of our other states. It's driven off
9 of either the 12 months into June or December historical
10 base period, and so we time it off of that information
11 and then begin preparing the rate case.

12 Q. Ms. Schmid also asked you a question about
13 whether the Company waits until all numbers are final to
14 begin preparing a rate case. Can you speak to that
15 question and elaborate on the answer that you intended
16 to give at that time?

17 A. Certainly. So for the purposes of preparation
18 of a rate case, like I said, we start with a historical
19 base period so that there's actuals for intervenors to
20 be able to review and audit. And so in that case, we
21 have to wait for the accounting books to close before we
22 can start, but we do begin the process of requesting
23 information about forecasted capital projects or known
24 changes in expenses for the -- if we have a forecast
25 test period and working -- start working with witnesses

1 to identify testimony that's going to need to be
2 provided.

3 Q. So Mr. Russell asked you a question about the
4 Company's intentions around the timing of this deferral
5 and the scope of this deferral.

6 Do you recall those questions?

7 A. Yes.

8 Q. And one of the questions he asked was how you
9 would handle potential increases for the next year, the
10 2024-2025 --

11 A. Right.

12 Q. -- insurance year. Do you recall those
13 questions?

14 A. I do.

15 Q. So how -- can you address how the Company
16 would handle those forward-looking expenses in a rate
17 case?

18 A. Certainly. So if we were in a rate case, once
19 we knew what the new premiums were or had a pretty good
20 estimate of what the new premiums would be in our
21 rebuttal filing, we would include that information in
22 the update that we would make, because typically when
23 we're making our rebuttal filing, we will update to the
24 best known information at that point in time. And then
25 if warranted, we would add additional testimony to

1 support the update, depending on the magnitude of the
2 change.

3 Q. So would that -- does that response assume the
4 Company's allowed to use a future test period?

5 A. Yes, of course. Yeah. If it was a historical
6 test period, then it wouldn't apply.

7 Q. And that's the process you discussed in terms
8 of one of the -- one of the time-consuming processes in
9 preparing and filing a rate case in Utah -- is the need
10 to ascertain the test period?

11 A. Yes. It certainly -- as -- it certainly
12 streamlines the process, knowing what our test period is
13 ahead of time.

14 Q. So Commissioner Harvey asked you some
15 questions about --

16 MR. MOORE: Objection. Generally, we don't
17 have redirect after Commissioner questions.

18 PRESIDING OFFICER: Well, if we're not going
19 to afford other parties the same opportunity -- and from
20 what we just discussed, it appears as that the
21 Commission's preference is that we not have redirect
22 after Commissioner questions. So I don't think it would
23 be appropriate to ask the witness questions about the
24 Commissioners' questions in this instance.

25 MS. McDOWELL: Fair enough.

1 PRESIDING OFFICER: So sustained.

2 MS. McDOWELL: I just -- I have one more
3 question about the DPU questions, and thank you for
4 indulging me.

5 Q. (BY MS. McDOWELL) So Ms. Schmid referred to
6 the forecast of the insurance proceeds I think as a
7 misforecast. Can you respond to that?

8 A. Yes. At the time that we prepare a rate case,
9 we're including the -- the best known information that
10 we have. So we would have included the -- the best
11 projection of the insurance proceeds we would have had
12 for the test period in that case, which was 2021. So I
13 wouldn't necessarily categorize it as a misforecast as
14 it speaks to '23 or '24.

15 Q. What was the basis of that forecast in the
16 2020 general rate case?

17 A. It was the -- the insurance premiums that
18 renewed in August of 2020, and we used that information
19 for the 2021 test period because those premiums would be
20 in place for the majority of the 2021 year.

21 Q. So in terms of the prudence and sharing issues
22 that Ms. Schmid asked you about, are those issues that
23 the Company would address -- would intend to address in
24 the rate case when it actually seeks recovery of this
25 deferral?

1 A. Yes.

2 Q. Is it your understanding -- I think you had
3 answered some questions around the MCI case. Is it your
4 understanding that that case both provides an exception
5 to retroactive ratemaking and single-issue ratemaking?

6 A. That is my understanding.

7 Q. That's all I have. Thank you.

8 PRESIDING OFFICER: Thank you. Is there any
9 request for recross?

10 MS. SCHMID: No. Thank you.

11 PRESIDING OFFICER: All right. Thank you very
12 much, Ms. McCoy.

13 MS. McCOY: Thank you.

14 PRESIDING OFFICER: Ms. McDowell, would you
15 like to call your next witness?

16 MS. McDOWELL: Yes, Judge. We would call
17 Mariya Coleman.

18 PRESIDING OFFICER: Ms. Coleman, do you swear
19 to tell the truth?

20 MS. COLEMAN: I do.

21 PRESIDING OFFICER: Thank you.

22 Whenever you're ready, Ms. McDowell.

23 MS. COLEMAN: Commissioner Harvey, how do I
24 turn this on?

25 Testing. There we go.

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MARIYA COLEMAN

was sworn and testified as follows:

DIRECT EXAMINATION

BY MS. McDOWELL:

Q. Good morning, Ms. Coleman.

A. Good morning.

Q. Can you please state your name and spell it for the record.

A. Mariya Coleman, M-a-r-i-y-a, Coleman, C-o-l-e-m-a-n.

Q. Ms. Coleman, how are you employed?

A. I'm employed by Berkshire Hathaway Energy. I'm the vice president in insurance and claims.

Q. In that capacity, have you prepared testimony in this proceeding?

A. I have.

Q. Is that testimony your direct and rebuttal testimony in this case?

A. Yes.

Q. Do you have any changes or corrections to that testimony?

A. No.

Q. Have you prepared a summary of that testimony?

A. I have.

Q. Please proceed.

1 A. Okay. Here we go. Good morning, Commissioner
2 Clark, Commissioner Harvey, and Judge Hammer.

3 In this case Rocky Mountain Power seeks
4 deferred accounting for the unforeseeable and
5 extraordinary increase in its excess liability insurance
6 payment expenses since the Commission last set the
7 Company's rates in its 2020 general rate case. In my
8 nearly 15 years in utility insurance and risk
9 management, there has never been a year-on-year increase
10 like the one in this case.

11 Excess liability insurance, including wildfire
12 liability insurance, is a reasonable and necessary
13 business expense that protects the Company and customers
14 against financial losses from third-party claims.
15 Maintaining insurance is a necessary part of operating a
16 utility and managing the risks associated with that
17 business.

18 Utilities also have insurance to avoid the
19 volatility of claims on customer rates. In past cases,
20 I understand that the Commission has approved the
21 Company's insurance costs for inclusion in rates as a
22 prudent business expense.

23 The Company's liability insurance costs have
24 increased substantially for 2023 through 2024, tracking
25 the increase in utility operating risk. However, even

1 at higher costs, current conditions make it more
2 important than ever the Company maintain the appropriate
3 level of liability insurance coverage.

4 The Company typically executes renewals of its
5 insurance policies in August of each year. The ten and
6 a half million total-Company now reflected in base rates
7 for excess liability insurance expense relate --
8 reflects the costs of the most recent insurance renewal
9 in August 2020. In August 2023, this renewal cost
10 122.6 million, an increase of 112.1 million, or
11 49.2 million in Utah.

12 The total coverage levels in 2020 and 2023 are
13 generally comparable, although there are differences in
14 the policies and their supplements. The insurance cost
15 increase for which the Company seeks deferred accounting
16 was unforeseeable at the time Utah rates were last set
17 in 2020. The speed and scale of the excess liability
18 insurance cost increase is unprecedented and does not
19 reflect either the Company's historical experience or
20 normal cost escalation. While premium increases are
21 always a possibility, nothing in 2020 indicated that the
22 insurance market would drive the Company's coverage
23 costs to the level seen in 2023. Even in 2022, the
24 magnitude of the 2023 increase could not have been
25 predicted.

1 The increase in costs is associated with
2 larger and more destructive wildfires in the western
3 U.S. due to prolonged drought conditions, extreme
4 weather events, and increased development in wildlife
5 areas. Utah, like most western states, is exposed to
6 increasing wildfire risk. As wildfire risk increases,
7 the need for the insurance and the costs associated with
8 that insurance also increased.

9 For example, from 2019 to 2023, the Company's
10 insurance premiums increased by approximately
11 1,764 percent. At the same time, the supply of
12 insurance covering claims for wildfire liability has
13 decreased.

14 Contrary to the assertions from intervenors in
15 this case, allowing deferral of the insurance cost
16 increases does not create a disincentive for the Company
17 to manage and mitigate its wildfire risk. Insurance is
18 a necessary expense when unanticipated liabilities
19 arise, but the Company takes action to avoid those
20 liabilities in the first place, as set forth in its
21 wildfire mitigation plans.

22 Moreover, the Company does not view insurance
23 as an alternative to adequate wildfire mitigation. In
24 fact, without robust wildfire mitigation plans, the
25 company could not obtain insurance, address coverage

1 limitations and term rate stability, and maintain its
2 credit ratings.

3 Finally, all intervenors in this docket have
4 discussed a recent court case in Oregon, James versus
5 PacifiCorp, in which the Company was found liable for
6 certain wildfire damages. The intervenors assert that
7 the James litigation may have affected the increased
8 premiums that insurers offered to the Company in 2023.
9 However, although the timing of the James litigation was
10 coincidental to the renewal of the Company's excess
11 liability insurance, none of the Company's insurers
12 indicated in their renewal discussions that James
13 affected the premium expenses in the policies they
14 offered.

15 Rather, the Company's insurers indicated that
16 the premium expenses were affected primarily by the
17 general increase in wildfire risk resulting from climate
18 change and various claims against multiple utilities in
19 the western U.S. Wildfire risk has increased so
20 dramatically that some insurers will no longer even
21 offer insurty -- insurance to utilities like the
22 Company.

23 In any event, the prudence issue raised by
24 intervenors, including issues around the James
25 litigation, are outside of the scope of this case

1 because the Company only seeks approval to defer these
2 expenses. Parties will have an opportunity to address
3 issues around prudence and retreatment when the Company
4 seeks recovery of these expenses in its next Utah
5 general rate case planned for later this year.

6 For these reasons, I respectfully ask the
7 Commission to approve the Company's application for
8 deferred accounting of the increased excess liability
9 premium expenses.

10 Thank you. That concludes my summary.

11 Q. Thank you, Ms. Coleman.

12 MS. McDOWELL: Ms. Coleman is available for
13 cross-examination and questions from the Commission.

14 PRESIDING OFFICER: Ms. Schmid, any cross?

15 MS. SCHMID: Just a bit.

16 CROSS-EXAMINATION

17 BY MS. SCHMID:

18 Q. Good morning. How are you?

19 A. Good morning. Thank you.

20 Q. So turning to your experience with Berkshire
21 Hathaway Energy Company and insurance, you had, you
22 said, roughly 15 years of experience?

23 A. Yeah, about 13 and a half.

24 Q. Okay. That's a lot.

25 A. Yeah. It's been a minute.

1 Q. As part of your responsibilities, do you look
2 at what is happening in terms of wildfires in the states
3 that PacifiCorp serves?

4 A. Yes.

5 Q. And do you agree that your testimony said that
6 litigation outcomes and -- litigation outcomes can
7 affect premium rates; is that right?

8 A. Litigation outcomes across all -- the entire
9 spectrum of the industry affect how insurers perceive
10 the utility industry wildfire risk. So the entire
11 pricing of insurance is affected by all claims that are
12 made that insurers pay for.

13 Q. As part of your responsibility for looking
14 into obtaining insurance and what insurance to obtain
15 and what the reasonable prices are, do you look at
16 things like Berkshire Energy -- Berkshire Hathaway
17 Energy company's 10-Ks and 10-Qs at all?

18 A. In a -- in a summary level, yes.

19 Q. Do you provide any input into wildfire-related
20 instances shown or depicted in the 10-Ks and 10-Qs?

21 A. While it's not within the scope of this
22 testimony we're discussing today, yes, I reviewed the
23 liabilities that are related to claims in the
24 development of the 10-K. So, yes, that section I do
25 review and contribute to.

1 (Reporter clarification.)

2 MS. SCHMID: My witness is taking on a dual
3 role. Not only will he be a witness today, but he's
4 going to pass out some cross-examination exhibits. And
5 I'll wait until those have been distributed before I
6 start. And I'll wait just a moment while people can
7 take up and look at what was passed out, if that's all
8 right with the Commission.

9 If we could mark what has been passed out as
10 DPU Cross Exhibit 1.

11 (DPU Cross Exhibit 1 marked for
12 identification.)

13 MS. SCHMID: And I'll identify it for the
14 record as the filing that Berkshire Hathaway Energy
15 Company made on -- for the quarterly period ending
16 March 31st of 2023.

17 This exhibit consists only of selected pages
18 from the 10-Q because the 10-Q is quite lengthy, but I
19 will represent that what is here is a true and accurate
20 representation of what was in the complete 10-Q insofar
21 as it addresses these things.

22 Q. (BY MS. SCHMID) So if you can turn to what's
23 page 179 as marked in the 10-Q. And so if we turn
24 probably about three pages in, we see Part II at the
25 top, "Legal Proceedings."

1 Do you see that?

2 A. I do see that.

3 Q. So do you see that in 2020, there was a class
4 action complaint against PacifiCorp, moving down, that
5 in 2021 there was another one captioned Shylo Salter.
6 And it keeps going and keeps going, some in 2022, lots
7 in 2022, and those are on page 180. And we get to
8 page 181 and 182, and the 10-Q gives notice of court
9 filings and lawsuits.

10 Is that a fair general description of what is
11 in here?

12 A. That is a description, yes.

13 Q. So is it your testimony that, based upon
14 factors such as the number of claims represented in the
15 10-Q, that you did not foresee insurance increases in
16 the wildfire excess liability arena?

17 A. I believe your question's slightly misstated.
18 The magnitude of these increases was not foreseeable.

19 Q. So is it your testimony that the -- that an
20 increase was foreseeable?

21 A. An increase of this magnitude was not
22 foreseeable.

23 Q. Okay. I'll move on.

24 When you're talking about the 1,764 percent
25 increase that's on your rebuttal at lines 6164, would

1 you agree that that increase is for the time period 2019
2 through 2023?

3 A. 1,600 -- 1,764 percent is the amount of the
4 difference in premium between 2019 policies and 2023
5 renewal policies.

6 Q. Do you know the percent increase from 2022 to
7 2023?

8 A. So the -- the percent increase is 234 percent,
9 approximately.

10 Q. Do you know the percent increase for 2021 to
11 2022?

12 A. I don't have it right off the top of my head
13 here for you, but we can answer that in either a data
14 request or in the proper procedural ways. It wasn't in
15 my testimony, and I don't have it ready for you.

16 Q. I'm asking that question because of your
17 general responsibilities and your general knowledge. So
18 I'm hopefully staying within your expertise that you
19 demonstrated.

20 Let's see. Just one moment.

21 MS. SCHMID: Those are all my questions, but I
22 would like to move for the admission of DPU Cross
23 Exhibit 1, which is the selected pages from Berkshire
24 Hathaway Energy Company's 10-Q.

25 MS. McDOWELL: No objection.

1 PRESIDING OFFICER: It's admitted.

2 (DPU Cross Exhibit 1 admitted into
3 evidence.)

4 MS. SCHMID: Thank you. That's all from the
5 Division at this time. Thank you.

6 PRESIDING OFFICER: Mr. Moore?

7 MR. MOORE: The Office has no questions.
8 Thank you.

9 PRESIDING OFFICER: Mr. Russell?

10 MR. RUSSELL: Yes.

11 CROSS-EXAMINATION

12 BY MR. RUSSELL:

13 Q. Good morning, Ms. Coleman. How are you?

14 A. Good morning. Thank you.

15 Q. I'm going to have two lines of question, both
16 which relate to statements made in your rebuttal
17 testimony. Let's start at the conclusion, which starts
18 on page 7 and goes into page 8.

19 A. Rebuttal or direct?

20 Q. Rebuttal.

21 A. Okay.

22 Q. In the conclusion to your rebuttal
23 testimony -- I asked Ms. McCoy a similar question and
24 she deferred to you -- but in the -- in the conclusion
25 in your rebuttal testimony, you make some reference to

Page 50

1 numbers that I understand to be the costs of renewal
2 insurance for the policy period beginning approximately
3 August 15th of 2023; is that right?

4 A. That's correct.

5 Q. Okay. And you make reference to these numbers
6 as approximate numbers. For instance, on line 150 you
7 make a reference to excess liability insurance costs of
8 approximately 122.6 million on a total-Company basis.

9 My question is why -- are these numbers still
10 approximate numbers, or do we have that nailed down yet?

11 A. These are nailed down.

12 Q. Okay.

13 A. However, when this was developed, we used the
14 wording "approximately" because there is a 90 to 120
15 window after where various federal and state taxes need
16 to be paid against insurance premiums, and they're
17 subject to the jurisdiction of each policy of what that
18 policy is actually covering. So it takes about 90 days
19 to get all those taxes paid in all the different forms
20 that -- that we have to pay them in.

21 Q. Okay. So as of today, we know that these are
22 the -- these are the right numbers?

23 A. Correct.

24 Q. Okay. So in line 153 where you say it results
25 in a deferral for Utah's allocated share of -- you say

1 here -- approximately 112.1 million total-Company.
2 That's -- that's now the number for the deferred amount
3 you're seeking?

4 A. That's correct.

5 Q. Okay. The next line of questions -- this
6 remains in your rebuttal testimony, but let's go to line
7 103.

8 A. Sure thing.

9 Q. I'm going to -- I'm just going to read a
10 section of this and then ask you a few questions about
11 it, and it starts, again, on line 103.

12 "As a general matter, insurance companies base
13 their policies on the total risk being insured and do
14 not compartmentalize certain percentages of that risk to
15 specific events. Specific to the James verdict, excess
16 liability insurance covers damages that the Company pays
17 to parties and attaches only after PacifiCorp pays a
18 claim. The Company has not yet paid the damages in
19 James and, as a result, has not filed James-related
20 claims with its insurers."

21 Did I get that right?

22 A. That's correct.

23 Q. I want to ask some follow-up questions because
24 I'm not entirely sure I understand how this works.

25 So the James event relates to an incident that

1 occurred in -- I think it was approximately September of
2 2020; right?

3 A. So James is a class action lawsuit around the
4 multiple wildfires that occurred in Oregon in -- over
5 Labor Day weekend in 2020.

6 Q. Okay. And the -- the James case resulted in a
7 verdict in -- it was around June of 2023; right?

8 A. That's correct.

9 Q. Okay. And when you state here that excess
10 liability covers the damages that PacifiCorp pays and
11 only attaches after PacifiCorp pays a claim, I'm trying
12 to figure out which insurer you seek reimbursement from
13 in the event that you pay a claim. Is it the insurer at
14 the time that the event occurred or the insurer that you
15 have at the time you make the payment, or is it some
16 other insurer?

17 A. Good question. So it -- we make claims on a
18 claims made basis. So when the events happened and the
19 claimants and plaintiffs started communicating to
20 PacifiCorp that they would be asserting claims against
21 the Company, PacifiCorp notifies its insurers in that
22 time period to preserve that coverage for those events.

23 Q. Okay. That's the way I thought it worked, but
24 I just wanted to make sure that I understood your
25 testimony here.

1 So when -- when that occurs, the process you
2 just described -- when that occurs and then subsequently
3 the Company makes a payment to a plaintiff or to a
4 claimant, you then seek reimbursement from the insurer
5 that you had at the time that the claims were made or
6 the time that you referred those claims to the insurer;
7 is that -- is that right?

8 A. That's correct.

9 Q. Okay.

10 A. The time that the claims were made.

11 Q. Okay. That's -- that's the clarity that I
12 needed. Thank you for that.

13 MR. RUSSELL: I have -- I'm sorry. I have no
14 more questions.

15 PRESIDING OFFICER: Ms. McDowell, any
16 redirect?

17 REDIRECT EXAMINATION

18 BY MS. McDOWELL:

19 Q. So, Ms. Coleman, do you have DPU Cross
20 Exhibit 1 in front of you?

21 A. Would that be the listing of the court cases?

22 Q. Yes, the 10-Q --

23 A. Yes.

24 Q. -- excerpt?

25 A. I have it.

1 Q. Do you recall Ms. Schmid asked you to review
2 the list of litigation that is contained on these pages?

3 A. Yes, we did a high level overview.

4 Q. So just to set the relevant time frame here,
5 you've testified that current rates include
6 approximately 10.5 million total-Company in excess
7 liability insurance; is that correct?

8 A. Those are the premiums for 2020, yes.

9 Q. And those premiums were set in August of 2020;
10 is that correct?

11 A. That's correct.

12 Q. And you would have started to get those -- the
13 quotes and the offers for that insurance sometime
14 earlier that summer in 2020. Does that sound about
15 right?

16 A. That's correct.

17 Q. So in reviewing the litigation listed here,
18 does any of that litigation go back to that date, the
19 summer of 2020?

20 A. All of this litigation is after the 2020
21 insurance policies were purchased. None of this
22 litigation is prior to the 2020 insurance purchase in
23 August 2020.

24 MS. McDOWELL: That's all that I have. Thank
25 you.

1 PRESIDING OFFICER: Any recross, Ms. Schmid?

2 MS. SCHMID: No. Thank you.

3 PRESIDING OFFICER: Mr. Russell?

4 MR. RUSSELL: None. Thanks.

5 PRESIDING OFFICER: Commissioner Harvey?

6 EXAMINATION

7 BY COMMISSIONER HARVEY:

8 Q. First, I will say -- welcome you to our
9 proceeding and tell Mr. Russell thank you for asking
10 some of my questions.

11 But, I do want to get a little bit better
12 understanding for myself of what is covered by these
13 insurance products. So the term that I've heard is
14 excess liability. What -- what determines whether
15 PacifiCorp just pays it itself or it files something
16 with an insurer?

17 A. Well, there -- there's multiple factors.
18 I'll -- I'll go into the liabilities side of insurances.
19 In my direct testimony on page 3 through 4, we have
20 definitions of all of our insurance policies. In this
21 context, it is liability insurance that has increased.

22 Liability insurance indemnifies PacifiCorp
23 when third parties have experienced property damage or
24 bodily injury that is allegedly related to PacifiCorp
25 and its actions and actually BHE and any of its

1 subsidiaries really since this is a Company-wide
2 purchase. So there's a couple of things that have to
3 happen. There has to be sudden and accidental third
4 party property damage or bodily injury that has to
5 exceed a deductible amount, which is \$10 million in this
6 case and has been since 2020.

7 If a claimant or a plaintiff can -- can
8 assert, reasonably, that they have experienced such,
9 then BHE and its subsidiaries, including PacifiCorp, may
10 enter into either a settlement or try a case related to
11 those facts and -- and, ultimately, you know, either pay
12 the claimant or defend itself. And if PacifiCorp or any
13 of the affiliated companies do pay, then the insurance
14 reimburses the Company for the amounts paid over the
15 deductible.

16 Q. And is there an upper limit to what they'll
17 pay?

18 A. So for non-wildfire coverages, it's
19 approximately \$540 million, and for wildfire coverages,
20 the supplements are included in testimony, and they vary
21 by state.

22 Q. And I think I understood you to say the terms
23 are one years when they are renewed?

24 A. They are one-year terms.

25 Q. And are they renewed typically with the same

1 Company, or is it an open bidding process each year, or
2 how does that process work?

3 A. Sure. So most of the utility industry
4 purchases its first kind of layer of insurance from a
5 Company called AEGIS. It is an industry mutual, in that
6 it only insures utility, electric and gas companies, and
7 some water. And so generally what that means is the
8 AEGIS policy sets the terms and the definitions for
9 coverage.

10 After that, most companies, including BHE,
11 build a tower on top of that to build those limits up.
12 In multiple spots in the tower, there's usually appetite
13 from -- from one, maybe two insurers, and they decide,
14 based on their business plans, of how large of an
15 insurance limit they'll sell. Occasionally, multiple
16 insurers might be interested in competing for the same
17 spot, but for wildfire insurance, that has become less
18 and less of the case.

19 So wildfire liability insurance does fall
20 within the liability insurance kind of definition. And,
21 historically, where there might be an opportunity to
22 move insurers in their attachment in the tower, that
23 opportunity has lessened based on their appetite to sell
24 their product. There is no way to compel the insurers
25 to -- to change their business plans and appetite to --

1 to necessarily accommodate the insurance needs.

2 What we do is find an alignment with various
3 insurers who are willing to sell us the insurance at
4 reasonable rates and, you know, try to fit them into a
5 tower so that we're not creating gaps in coverage nor
6 duplicating coverage and instead line up a -- kind of a
7 nice tower of subsequent insurance, depending on the
8 size of the event.

9 Q. And my impression from the testimony is that
10 the number of those insurers participating in this
11 tower, as you described, has decreased?

12 A. So what has -- what has happened is the amount
13 of insurance that insurers might normally sell, for
14 example, in \$25 million pieces, has significantly
15 shrunk, where many insurers will now sell only -- only a
16 small piece. So where we might have -- I mean, we have
17 increments as small as \$1 million that we are purchasing
18 this tower in. So that means an insurance application,
19 you know, seeking these folks out and getting them to
20 sell up to \$1 million increments of this. Whereas, in
21 the past, these towers have been created in 10-,
22 \$25 million increments. And so the count of
23 participants may be about -- about steady, but it's
24 in -- it's becoming in much smaller tranches.

25 Q. Thank you. I'm curious a little bit about

1 this overall Company, not PacifiCorp, but BHE level
2 insurance. Is my understanding correct that that's
3 where the purchase takes place -- is at that level, and
4 then it's somehow allocated down to the various
5 companies that were listed on that first page of DPU
6 Cross 1?

7 A. It -- it is, yeah. So the first named
8 insurers is Berkshire Hathaway Energy and a single,
9 really, insurance tower is purchased. PacifiCorp, this
10 year, given that it -- it is the -- really the only
11 Company that needed additional wildfire insurance,
12 purchased some stand-alone insurance in just its own
13 name, but for the most part, the BHE coverage is what --
14 what's applying to -- to all companies.

15 And so the way the policy wording works for
16 the insured is Berkshire Hathaway Energy and all
17 subsidiaries, excluding the Canadian Company due to
18 Canada's rather restrictive insurance laws. So that's
19 the only real holdout in terms of them being included in
20 the corporate purchase.

21 Q. And so is BHE able to, then, identify very
22 specifically what costs for that Company-wide -- or
23 family of Company-wide policies are being driven by
24 PacifiCorp?

25 A. So the wildfire sections of the insurance are

1 more linearly attributable to PacifiCorp and one other
2 western utility. Otherwise, the rest of the costs go
3 through a multifactor allocation in which PacifiCorp
4 participates because the insurers don't necessarily say
5 of our -- let's -- let's say, for example, our
6 catastrophic auto coverage. PacifiCorp's, you know,
7 responsibility is 50 percent. The insurers have a lot
8 of incentive to -- to not do that, in that if we pull a
9 company out, they perceive that they're still selling us
10 a full widget. So if we pull out one of the
11 subsidiaries, they don't intend on giving BHE an
12 incremental credit of that size because, in their
13 perspective, they still sold a full-sized product.

14 And so the insurers don't really do that for
15 us. We've created a multifactor allocation that we've
16 been using for several years, just based on some
17 objective markers that are listed in the testimony, and
18 we put the companies through -- through those allocation
19 factors for the coverages that overlap all of them.

20 Western wildfire coverage, which is actually
21 defined for the states that it's covering, is -- is
22 outside of those -- that other broader coverage
23 allocation and has its own set of allocated factors
24 because those policies specifically identify the states
25 that they are covering. So then we use the -- the

1 assets in those states to actually allocate those costs.

2 Q. Thank you. So in looking at the -- the
3 exhibit that was handed out by the DPU, am I correct in
4 thinking that Nevada Power and Sierra Pacific Power
5 would need wildfire?

6 A. They do participate in BHE's wildfire
7 insurance purchase.

8 Q. So in your testimony, I saw that list of
9 factors that BHE uses to -- but it was simply a list.
10 It wasn't an explanation of how they're done, at least
11 the part I remember seeing.

12 Is it -- would it be possible to use whatever
13 methodology is used there to look within a company,
14 specifically, Pacific Power versus Rocky Mountain Power?

15 A. Well, we haven't done that exercise. We
16 could -- we could try. It's not a no. We could
17 certainly try to rewrite an allocation similar to that
18 but within the Company. I don't know that we've
19 necessarily been asked to do that in the past since the
20 premiums are allocated system-wide.

21 Q. I was just curious if it was possible, not
22 whether or not you have.

23 A. Yeah.

24 Q. Okay. I think that's all the questions I
25 have. Thank you.

1 A. Okay.

2 PRESIDING OFFICER: Commissioner Clark?

3 EXAMINATION

4 BY COMMISSIONER CLARK:

5 Q. Good morning, Ms. Coleman.

6 A. Good morning.

7 Q. I -- I understand your testimony to mean,
8 generally, that the increase in insurance premiums is
9 a -- is being driven by the overall change in the risk
10 profile for electric utilities in the west because of
11 wildfire, the incidents of wildfires, and -- and the
12 levels of damage that are being experienced. Would that
13 be correct?

14 A. That's correct.

15 Q. So I'd like to -- I think at least the
16 testimony refers to events in 2017 that -- or someone's
17 testimony does, at least, that -- and -- and the Pacific
18 Gas and Electric experiences in that year approximately
19 at least that drove Pacific Gas and Electric actually to
20 bankruptcy, but I'd like to go a little further back.

21 I'm recalling the Cedar Fire in southern
22 California in about 2004 that burned roughly
23 270,000 acres, and I'm wondering if you know what impact
24 that experience for -- I think it was San Diego Gas and
25 Electric Company -- had on its insurance premiums --

1 excess liability insurance premiums?

2 A. So my experience does not go back to 2004.
3 However, the more recent premium levels that California
4 major utilities were reporting were in excess of 70
5 cents on the dollar prior to the California Commission
6 choosing to create self-insurance mechanisms for those
7 companies rather than continuing to pay the commercial
8 market.

9 So the exact effect of a 2004 event, I don't
10 have that ready for you today. We could probably send
11 an inquiry to some -- some of the broker's community to
12 see if that's something they might have. However, I do
13 know the more recent financial effects of commercial
14 insurance on the California utilities, and they were --
15 they were pretty extreme. So we can -- we can inquire
16 on the 2004 event.

17 Q. 2008, I think, over -- or almost
18 1.7 million acres burned in California and a number of
19 fatalities, maybe a billion dollars of property damage
20 or so. I suppose that was scattered among the various
21 utilities. Do you have any -- excuse me -- specific
22 awareness of the premium impacts that the electric
23 utilities in California experienced in that year?

24 A. When I started in the industry in 2010, the
25 kind of knowledge base was that California -- the big

1 three California utilities are massive premium payers in
2 terms of their liability insurance. In terms of the
3 specifics, I don't have those, but that was a common
4 perception that those Californian utilities sure do pay
5 a lot of money for liability insurance due to their
6 wildfire risk.

7 Q. In the 2017 event for Pacific Gas and
8 Electric, was that a similar impact? Or -- you
9 mentioned some California regulatory changes. Did those
10 affect the impact?

11 A. I believe in more recent history, you know,
12 California established a catastrophic fund, and after
13 the establishment of that fund, the big three California
14 utilities that subscribed to it only purchased
15 commercial insurance up to the \$1 billion attachment
16 point of that fund. So it created a little bit of a --
17 of a cap in how much they would have the -- the appetite
18 to purchase.

19 It did not reflect a cap in the liabilities
20 that they might experience in that their claims could be
21 significantly more than the \$1 billion insurance that
22 they would purchase below the fund. I think that that's
23 about as -- as informed as I can give you an answer.

24 Q. Okay.

25 A. Yeah.

1 Q. And I'm thinking specifically of just what
2 effect on PGE -- or I mean perhaps -- was their
3 bankruptcy related to their new insurance premiums as
4 well as to the liabilities that they -- that they were
5 experiencing because of the 2017 fires?

6 A. I believe their general liabilities and
7 outbalance kind of expenses were all contributing to --
8 to their needs to file bankruptcy. Certainly, the
9 liabilities that they incurred due to their catastrophic
10 wildfires contributed to that.

11 Q. And just going back to your -- your responses
12 to Commissioner Harvey regarding the claims made
13 process. If you receive a claim from, say, a homeowner
14 whose property is damaged by a fire in their area, you
15 only would pay that claim if -- if you perceive there
16 was evidence that would demonstrate that your utility
17 caused the fire; isn't that right?

18 A. That -- it could be worded that way. It would
19 be a perception that -- that there could be liability
20 when assessing and investigating the situation.

21 Q. It would be a litigation evaluation, I
22 suppose, whether you would lose a trial or not in -- in
23 demonstrating some defense to the claim of liability.
24 Is that generally correct? I know you're not a lawyer
25 but --

1 A. That -- that's generally correct, right.

2 Q. Okay. I wanted to just look at the sublimits
3 for a minute. I think those are on page 7 of your
4 direct testimony. Am I correct?

5 A. You -- yes.

6 Q. So am I correct that the sublimits that you've
7 covered through insurance for at least Idaho, Utah, and
8 Wyoming have basically doubled between -- between the
9 coverage that was enforced in 2022 and what you're
10 seeking to recover or at least begin to account for, at
11 least, in this proceeding?

12 A. That's correct.

13 Q. Okay. And that increase of about 200 and,
14 say, 15- or 16 million dollars in coverage would come at
15 a cost; is that also correct? It would -- it would
16 drive up the premiums that you would expect to pay for
17 that increased coverage; is that true?

18 A. That is correct, that the additional purchase
19 of insurance resulted in additional premiums.

20 Q. And just one other thing, and I think this
21 is -- you made this clear with Commissioner Harvey, but
22 your practice of allocating costs among entities
23 includes the loss experience of those entities; right?
24 So we could infer from that that that's a reasonable
25 consideration for someone making a judgment about what

1 the allocation should be and -- and -- yeah. I'm just
2 asking you if that's correct -- if that's a correct
3 conclusion.

4 A. That's a correct conclusion. We use the
5 insured loss history. So, for example, you know, losses
6 that weren't covered by insurance then clearly didn't
7 ding the insurance. So we use the -- essentially the
8 amounts that companies have taken out of insurance
9 policies as the allocation factor. So yes.

10 Q. Those are all my questions. Thanks very much.

11 A. Of course.

12 PRESIDING OFFICER: Thank you for your
13 testimony, Ms. Coleman.

14 Any other witnesses, Ms. McDowell?

15 MS. McDOWELL: No. That concludes the
16 Company's case. I neglected to offer Ms. Coleman's
17 direct and rebuttal testimony. So I'd like to do that
18 now.

19 PRESIDING OFFICER: It's admitted.

20 (Direct and Rebuttal Testimony of Mariya
21 V. Coleman admitted into evidence.)

22 MS. McDOWELL: Thank you.

23 PRESIDING OFFICER: All right. You're
24 excused, Ms. Coleman. Feel free to leave.

25 And Commissioners are requesting a short

1 recess. So should we say be back at ten to the hour?

2 Thank you. We're in recess.

3 (Recess taken from 10:37 to 10:50.)

4 PRESIDING OFFICER: Let's go back on the
5 record.

6 We'll turn to you, Ms. Schmid. Are you ready
7 to call your first witness?

8 MS. SCHMID: I am.

9 PRESIDING OFFICER: Go ahead.

10 MS. SCHMID: The Division would like to call
11 its witness, Mr. Jeffrey S. Einfeldt.

12 PRESIDING OFFICER: Mr. Einfeldt, do you swear
13 to tell the truth?

14 MR. EINFELDT: Yes.

15 PRESIDING OFFICER: Thank you.
16 Go ahead, Ms. Schmid.

17 MS. SCHMID: Thank you.

18 JEFFREY S. EINFELDT

19 was sworn and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SCHMID:

22 Q. Good morning.

23 A. Good morning.

24 Q. Could you please state and spell your full
25 name for the record.

1 A. My name is Jeffrey S. Einfeldt, and it's
2 J-e-f-f-r-e-y, initial -- middle initial S. Einfeldt is
3 E-i-n-f-e-l-d-t.

4 Q. By whom are you employed? What is your title
5 and your business address?

6 A. I'm employed by the Division of Public
7 Utilities in Utah, and my title is technical consultant,
8 and my address is -- I may have to look that up. 160 --
9 COMMISSIONER HARVEY: East.

10 A. -- East 300 South, Salt Lake City, Utah.

11 Q. (BY MS. SCHMID) Thank you. Have you
12 participated on behalf of the Division in this docket?

13 A. Yes, I have.

14 Q. Did you assist and/or cause to be filed --
15 prepared and filed your direct testimony filed on
16 November 29th, 2023, and your surrebuttal testimony
17 filed on January 9th, 2024?

18 A. Yes.

19 MS. SCHMID: The Division would like to move
20 for the admission of Mr. Einfeldt's direct and
21 surrebuttal testimonies.

22 MS. McDOWELL: No objection.

23 PRESIDING OFFICER: They're admitted.

24 (Direct and Surrebuttal Testimony of
25 Jeffrey Einfeldt admitted into evidence.)

1 Q. (BY MS. SCHMID) Do you have a summary to
2 share with us today?

3 A. Yes, I do.

4 Q. Please proceed.

5 A. Good morning, Commissioners and Judge Hammer.
6 Thank you for the opportunity to address Rocky Mountain
7 Power's application for a deferral account. After
8 careful consideration of the Company's application for
9 deferred accounting for the increase of wildfire
10 insurance coverage, the Division recommends the
11 application for the deferred accounting be denied
12 because a deferral is not needed or available when
13 traditional ratemaking tools exist to address the
14 problem.

15 The Division recommended to the Company that
16 it employ the use of a general rate case coupled with an
17 interim rate request to more appropriately and
18 thoroughly examine numerous factors in determining just
19 and reasonable rates.

20 In its testimony, the Company discusses
21 financial performance regarding return on equity. Its
22 authorized rate of return is 9.65 percent, and it earned
23 4.58 percent based on June 2023 results of operations.
24 The Company mentions the wildfire insurance increase
25 would further reduce its earning by another 90 basis

1 points to 3.66 percent, for a total shortfall of 600
2 basis points, or 6 percent, with 90 basis points being
3 attributed to the insurance increase and 510 basis
4 points attributed to other factors.

5 This illustrates the need to comprehensively
6 examine the changes in the Company's operating and
7 financial environment, including costs, revenues, rate
8 of return on equity, and other aspects in a general rate
9 case to develop wholistic and just -- wholistic, just,
10 and reasonable rates.

11 There is no need to evaluate the factors
12 allowing retroactive ratemaking, which exists to make an
13 exception to normal ratemaking tools for unforeseen
14 circumstances that cannot be addressed in ordinary
15 ratemaking.

16 Nevertheless, the Company's knowledge of
17 rising rates could have been addressed in time to avoid
18 or minimize regulatory lag, compensating it for
19 increased insurance costs. This approach would also
20 allow wholistic evaluation of revenues and expenses to
21 arrive at just and reasonable rates.

22 This concludes my summary.

23 MS. SCHMID: Thank you. Mr. Einfeldt is now
24 available for cross-examination questions and questions
25 from Mr. Clark -- Commissioner Clark, Commissioner

1 Harvey, and Mr. Hammer.

2 PRESIDING OFFICER: We'll go to Mr. Moore.

3 Any cross-examination?

4 MR. MOORE: No cross. Thank you.

5 PRESIDING OFFICER: Mr. Russell?

6 MR. RUSSELL: No, I don't have any questions.

7 Thank you.

8 PRESIDING OFFICER: Ms. McDowell?

9 MS. McDOWELL: Thank you, Judge Hammer.

10 CROSS-EXAMINATION

11 BY MS. McDOWELL:

12 Q. Good morning.

13 A. Good morning.

14 Q. So I wanted to start where you left off in
15 terms of the factors for an exception to retroactive
16 ratemaking and single-issue ratemaking referenced in the
17 MCI case. One of those factors is foreseeability;
18 correct?

19 A. Correct.

20 Q. And can you turn to page 7 of your direct
21 testimony please, and specifically I want to direct your
22 attention to line 190 -- excuse me -- your testimony
23 beginning at line 124. And there you state, "The
24 Company's knowledge in advance of the August rates
25 taking effect renders the increases foreseeable for

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1 purposes of evaluating a deferral." And then on line
2 2127 you state, "The rise in insurance cost was foreseen
3 by the Company before it took effect."

4 Do you recall that testimony?

5 A. Yes.

6 Q. So to summarize it, is it your position that
7 the Commission should evaluate foreseeability for this
8 deferral when the Company became aware of the increased
9 insurance costs in 2023 and not in 2020 when rates were
10 previously set?

11 A. Correct.

12 Q. So I'd like to turn to a document that I've
13 distributed in the break and provided a copy to you and
14 your counsel, and I've also provided it to the
15 Commission. The document is dated January 10th, 2024,
16 and I'd like to mark that as RMP Cross Exhibit 1.

17 PRESIDING OFFICER: It's marked.

18 (RMP Cross Exhibit 1 marked for
19 identification.)

20 MS. McDOWELL: Thank you.

21 Q. (BY MS. McDOWELL) Do you have that document,
22 Mr. Einfeldt?

23 A. That's addressed to Jana Saba?

24 Q. Correct.

25 A. Yes.

1 Q. And this is a copy of the Division's response
2 to the Company's Data Request 1.1; is that correct?

3 A. Yes.

4 Q. So if you turn to page 2 of that exhibit,
5 which is the DPU's response to Data Request 1.1, I have
6 a couple of questions about that on the document. Do
7 you have that?

8 A. Yes.

9 Q. Now, the question in this data request asks
10 about some specific guidelines that it attached as
11 Attachment 1 and then requested whether the Commission
12 reviewed those guidelines in this case in preparing your
13 testimony. Do you recall that?

14 A. If the Commission reviewed them or if the
15 Division reviewed them?

16 Q. So -- well, the question basically states
17 whether the guidelines that you referred to in your
18 testimony are the guidelines that are attached to this
19 exhibit as the final page of the exhibit. Is that a
20 fair summary?

21 A. Can you restate that for me, please?

22 Q. Sure. The request specifically asks about the
23 attachment to this data request, which is the last
24 page of the exhibit. Do you have that?

25 A. Yes.

1 Q. And that last page, I'll represent, is
2 entitled "Division of Publicity Utilities, Guidelines
3 for Allowance of Deferred Accounting."

4 Do you see that?

5 A. Yes.

6 Q. So your testimony referred to traditional
7 elements evaluated for exceptions to the rule against
8 retroactive ratemaking and asked whether those are the
9 elements listed in the guidelines. Do you recall that?

10 A. I'm not sure about the last part of that
11 question, but if I may attempt to answer or -- you're
12 asking whether we can -- we, as the Division, and me
13 specifically -- did we -- were we aware of this list of
14 items --

15 Q. Yes.

16 A. -- attached to this, and was this part of our
17 analysis and review of the Company's current application
18 for deferred accounting?

19 Q. Yes.

20 A. Yes. The answer to that is yes. We were
21 aware of that. We did consider that. I did read that
22 again as we considered this request.

23 Q. Thank you. So if you could turn to those
24 guidelines. Again, the last page of this exhibit. And
25 under Roman Numeral I, it indicates that the Division

1 considers deferral requests on a case-by-case basis to
2 determine whether the deferral falls within the
3 guidelines listed below; is that correct?

4 A. Roman Numeral I: "Events determined by the
5 Commission on a case-by-case basis to meet one of the
6 following circumstances." Correct.

7 Q. Okay. So I'd like to ask you about, under
8 Roman number II A, that guideline reads, "Unforeseen --
9 events where the impacts could not be anticipated in the
10 ratemaking process."

11 Do you see that criteria?

12 A. Yes.

13 Q. So doesn't that criterion indicate that the
14 Division's guidelines consider whether an expense was
15 foreseeable during the ratemaking process rather than
16 when the costs in question were incurred?

17 A. I guess, yeah, it does say that. What does --
18 what does it mean? During the ratemaking process, if
19 the Company were to begin a general rate case, that is
20 the ratemaking process. It does not state and nor does
21 it mean that it's limited to the last general rate case.

22 Q. So I have a question for you on -- about the
23 response back on page 2 of this exhibit. You indicated
24 that these guidelines should be construed in the context
25 of the testimony of David T. Thomson in a particular

1 case, which I'll represent to you was the -- the -- is
2 often referred to as the Powerdale referral.

3 Do you see that in the first paragraph of the
4 response?

5 A. Would you like me to read that first
6 paragraph?

7 Q. No. I'm just asking you to agree that I've
8 summarized it accurately, that these guidelines,
9 according to this response, should be construed or
10 interpreted in the context of Mr. Thomson's testimony
11 where the guidelines were provided.

12 Do you see that?

13 A. Well, I see "The attachment or supplement
14 cannot be considered as the standard. This guide should
15 be combined with the context of the report and order
16 that was adopted as David Thomson's testimony for those
17 dockets."

18 Q. So I'd like to direct your attention to the
19 other cross exhibit that I've provided to you, which I'd
20 like to mark as RMP Cross Exhibit Number 2.

21 PRESIDING OFFICER: It's marked.

22 (RMP Cross Exhibit 2 marked for
23 identification.)

24 MS. McDOWELL: Thank you.

25 Q. (BY MS. McDOWELL) Do you have that,

1 Mr. Einfeldt?

2 A. That's the one that's entitled "Direct
3 Testimony of David T. Thomson"?

4 Q. Correct.

5 A. Yes.

6 Q. And is it your understanding that the
7 guidelines that we were discussing were sponsored by
8 Mr. Thompson in this case, in the Powerdale case?

9 A. Yeah. They were referred to by Mr. Thomson in
10 that case.

11 Q. Can you turn to page 4 of Cross Exhibit 2,
12 please. And there on lines 70 to 72, Mr. Thomson
13 testified that "Using the Division's guidelines, the
14 Grid West costs do not qualify for deferred accounting
15 for the following reasons. First, the costs are not
16 extraordinary and could have been foreseen and included
17 in a past rate case."

18 Do you see that?

19 A. Yes.

20 Q. And then further down the page, Mr. Thomson
21 stated that "The Division believes that RMP had adequate
22 time and knowledge of the Grid West situation to present
23 this information in its last rate case filing or at
24 least during the proceedings of the last rate case,
25 which was filed March 2006."

1 Do you see that?

2 A. Yes.

3 Q. And then I'd like to direct your attention to
4 page 11 of that cross exhibit. There, on line 239, it
5 states, "Second, as to the next part of the transition
6 costs of 40 million that was not contemplated in the
7 last rate case, the Division believes there should be no
8 deferral of the cost because they would or could have
9 been foreseen or should have been included in the last
10 rate case."

11 Do you see that?

12 A. Yes.

13 Q. So in the docket you described as providing
14 context for the guidelines we discussed, the Division
15 evaluated foreseeability at the time of the utility's
16 last rate case; correct?

17 A. Correct.

18 Q. Now, can you turn back to page 7 of your
19 direct testimony in this case.

20 Do you have that?

21 A. Yes.

22 Q. And on lines 123 and lines 124, didn't you
23 acknowledge that, quote, "... one could not have guessed
24 in 2020 that rates would rise to where they are now..."

25 Do you recall that testimony?

1 A. Yes.

2 Q. And for context, 2020 was when the Commission
3 last set the Company's rates in its last general rate
4 case; correct?

5 A. Yes.

6 May I just ask permission to go get my water
7 bottle?

8 PRESIDING OFFICER: Of course.

9 Do you need Ms. McDowell to restate the last
10 question?

11 THE WITNESS: Sure. Yeah.

12 (Record read: 81:2-5.)

13 Q. (BY MS. McDOWELL) Now, considering the
14 company's last rate case in 2020, if the Company had
15 requested 1226 -- 122.6 million in excess liability
16 insurance costs when its projected 2020 premium was
17 10.3 million, wouldn't the Division have objected to
18 that request on the basis that such a large increase was
19 unforeseeable and extraordinary?

20 A. I suspect so.

21 Q. Similarly, if the Company had filed a general
22 rate case in 2022 or early 2023 requesting 122 -- 6 --
23 point 6 million in liability costs, insurance costs,
24 when its 2022 premiums were 32 million, wouldn't the
25 Division have objected to this request on the basis that

1 such a large increase was unforeseeable and
2 extraordinary?

3 A. I don't know an answer. I don't know the
4 answer to that because I suspect this information could
5 likely have become available during that process, and
6 then we would have had the opportunity to analyze it, to
7 come up to just and reasonable rates. Because if this
8 is determined to be prudent and just, these rates, for
9 which that hasn't happened yet, but determine -- if they
10 are determined to be such, then they should be included
11 in rates. Ratepayers should pay the just and reasonable
12 amounts that -- that it costs to be able to turn on the
13 lights.

14 And with regard to Mr. Thomson's testimony
15 earlier that you referred to and here, Mr. Thomson is
16 referring to the last general rate case, as you pointed
17 out, that was a year prior to this. The rate case was
18 in 2006, it appears. His testimony is in 2007. That is
19 a short period of time. And the next rate case is -- I
20 don't know when the next rate case happened, but things
21 seemed to have changed since then -- the regulatory
22 environment -- such that rate cases aren't filed as
23 often.

24 So deferred accounting orders become much more
25 weighty, I guess, with -- that may not be the -- the

1 best word to use, but they're a heavier lift. They're
2 more impactful. They're just more weighty when the time
3 is extended longer.

4 Q. So let me --

5 A. Thanks for letting me ramble.

6 Q. Yeah. It's not my practice to interrupt
7 people. I always want to hear what people have to say.

8 So let me ask you. You did -- you touched on
9 a fair number of things in that last response, but one
10 of them was just and reasonable rates and prudent costs.
11 You agree that, as a general matter, the Company's
12 insurance costs have been included in its rates;
13 correct?

14 A. Yes. In the past, yes.

15 Q. Yes. And now turning back to page 7 of your
16 testimony and then going on to page 8, you do testify
17 that there are some additional issues that are
18 significant in determining the prudence of the estimated
19 insurance cost increase and whether the full amount
20 should be recovered from ratepayers in this or another
21 proceeding.

22 Do you recall that testimony?

23 A. Yes, yes, I do.

24 Q. And you assert that these issues have not been
25 adequately addressed in this docket; correct?

1 A. Correct.

2 Q. And that they would be more appropriately
3 addressed in a general rate case where they could be
4 fully vetted. Is that a fair --

5 A. Yes.

6 Q. -- summary?

7 Now, isn't it true that the Company has not
8 sought actual rate treatment for these deferred amounts
9 in this docket?

10 A. That is my understanding. The Company with
11 the deferred accounting order is seeking to drive a
12 stake in the ground to reserve their right to look at
13 these later, in layman terms.

14 Q. Yeah. And can you turn back to Cross
15 Exhibit 1, please, the guidelines.

16 Do you have that?

17 A. Yes.

18 Q. This is the last page of the exhibit.

19 So I want to direct your attention to
20 guideline IV B at the bottom of the page there, which
21 states that a "Rate case must be filed for recovery of
22 the deferral to be considered."

23 Do you see that?

24 A. Yes.

25 Q. So the Company's approach in this case

1 presenting the deferral simply for approval with the
2 express position that recovery issues, prudence issues,
3 rate treatment issues would be handled in a subsequent
4 rate case -- that's consistent with the Division's
5 guidelines; correct?

6 A. That's -- yes, and that's consistent with the
7 Division's understanding of a deferred accounting order.

8 Q. So while your testimony says that recovery and
9 these issues could be determined in this or another
10 proceeding, based on both the Company's application and
11 the Division's guidelines, the recovery of funds should
12 be addressed in that future rate proceeding; correct?
13 Not in this proceeding.

14 A. That's correct.

15 Q. So wouldn't you agree that many of the issues
16 you list on page 8 address whether the Company's
17 insurance liability premium expenses were prudent?

18 A. Yes. Those are questions that we have tipping
19 our hand to what some of the things are that we would be
20 looking at if -- later. I mean, whether this deferred
21 accounting order is granted for this period of time that
22 we're looking at from July -- or from August to -- going
23 forward or not, it is likely that the insurance rates --
24 if this is denied, if the deferred accounting order is
25 denied, okay, just for discussion purposes, there's

1 still a huge increase in insurance costs that need to be
2 analyzed for prudence in the next general rate case,
3 independent of whether it includes from August until now
4 or just going forward. That -- that -- those same
5 issues have to be addressed and analyzed.

6 Q. I see. And can you turn back to the
7 guidelines. The same -- the same section that we were
8 discussing before in Section IV, guideline IV C3
9 indicates that a future rate case will also consider
10 prudence and reasonableness of expenditures.

11 Do you see that guideline?

12 A. Number 4 it looks like, yeah.

13 Q. Sorry. If I misspoke. IV C4. Yes. I had
14 that wrong in my notes.

15 A. Right.

16 Q. Thank you.

17 So is it fair to say that the issues you
18 identify on page 8 of your direct testimony, which you
19 describe as relating to the prudence of the estimated
20 insurance costs, will be addressed in a future rate
21 proceeding when the Company actually seeks recovery of
22 these costs?

23 A. We anticipate these -- these issues would come
24 up. This is by no means an exhaustive list. These are
25 just some of the things that came to mind, and as we

1 would consider that, you know, often answers to
2 questions raise more questions and more issues, and some
3 other things may come to light that we would also want
4 to explore. So this is not -- by no means an exhaustive
5 list of things that we have to check off.

6 Q. Understood. Can you turn to page 3 of your
7 testimony, the direct testimony still. And there on
8 line -- beginning on line 49, you state, "Retroactive
9 ratemaking is a tool that allows recovery of
10 extraordinary items in limited circumstances where other
11 regulatory tools do not exist to allow reasonable
12 recovery."

13 Do you recall that testimony?

14 A. Yes.

15 Q. So your testimony appears to take the position
16 that the Commission should not approve deferred
17 accounting any time the applicant could have instead
18 filed a general rate case application. Is that a fair
19 summary?

20 A. No, I don't -- I don't think so. That "any
21 time" becomes pretty exhaustive. Reasonably, when the
22 Company could reasonably have filed a general rate case
23 to address the issue, the Company should reasonably file
24 a general rate case. It's just a better process. It's
25 a more complete process. It is much more likely to get

1 to just and reasonable rates and address Company issues
2 in -- in that proceeding.

3 Q. And isn't it true that the Company's proposal
4 here is to file for a deferred accounting and then file,
5 as a follow-up, a general rate case in 2024?

6 A. That's what they've indicated, yeah.

7 Q. So can you turn back to the guidelines we've
8 been discussing on Cross Exhibit 1?

9 Now, those guidelines -- nowhere in those
10 guidelines does it state that deferred accounting should
11 not be permitted if the Company could have reasonably
12 filed a general rate case instead; correct?

13 A. No.

14 Q. That's not included in the guidelines, is it?

15 A. Right. And these guidelines are not an
16 exhaustive list of items either. And when David Thomson
17 put this together for his testimony -- life changes.
18 Life has changed since 2007. Life has changed since
19 1984, 1988, and guidelines need to be adjusted. A
20 number of the items on this, we -- are -- are still
21 valid, but there may -- there are other items that --
22 that have developed, other circumstances -- that's
23 probably not the right word either -- the environment
24 has just changed a little bit requiring us to be aware
25 of that.

1 Q. So this is a new requirement you're proposing
2 then?

3 A. It's a new aspect -- I don't know that it's a
4 new aspect. It is an aspect that we are considering and
5 we have considered in this case.

6 Q. Are you aware of any previous Commission
7 orders where the Company has rejected an application --
8 where the Commission has rejected an application for
9 deferred accounting on the basis that the applicant
10 could have instead filed a general rate case?

11 A. Not off the top of my head, no.

12 Q. Now, can you turn back to your testimony at
13 page 3, and that sentence I read earlier when we began
14 this particular line of questions and answers, there is
15 a footnote -- footnote Number 7, where you cite a
16 Pennsylvania case in support of your position that
17 deferrals should not be allowed if the Company could
18 file a general rate case.

19 Do you see that?

20 A. Yes.

21 Q. Are you aware of any precedent from Utah
22 courts similarly limiting deferred accounting to
23 circumstances where no other regulatory tool existed to
24 allow recovery of the utilities cost?

25 A. No. Perhaps I will become aware of one later.

1 I don't know.

2 Q. Can you now turn to your surrebuttal
3 testimony? And, specifically, can you turn to page 3,
4 line -- it's the sentence beginning line 44 where you
5 state, "While it is not yet clear exactly when the
6 Company knew or should have known it would face markedly
7 different insurance rates beginning in August 2023, even
8 if it took two to three months to file a general rate
9 case after learning of the increases, the Company could
10 have collected all or substantially all of the
11 difference in insurance costs."

12 Do you recall that testimony?

13 A. Yes.

14 Q. Now, your position here assumes that the
15 Company would be able to use a future test period;
16 correct?

17 A. Yes. That's my -- my understanding is that's
18 what the norm is in Utah.

19 Q. Is it correct that there's a prefiling --
20 pre-rate case filing process in Utah to determine the
21 test year, which itself can take some time to work
22 through?

23 A. That's my understanding. It seems to be a
24 fairly long and bureaucratic process.

25 Q. Now, your position here assumes that interim

1 rates would be allowed; correct?

2 A. Yes, yes.

3 Q. And that's up to the Commission; correct?

4 A. That's correct.

5 Q. Now, this case has been pending since August
6 of 2023; correct? The deferral was filed in August of
7 2023?

8 A. That's -- that's my recollection, yes.

9 Q. So the case has now been pending approximately
10 five months?

11 A. Yeah.

12 Q. So the -- the -- this case has been pending
13 for approximately five months on the narrow issue of
14 just whether to allow deferred accounting; correct?

15 A. This case has been pending for five months.

16 Q. Doesn't that suggest that getting the
17 Company's insurance -- increased insurance premium cost
18 into base rates through a general rate case of two to
19 three months is a pretty unrealistic time line?

20 A. Well, I'm not suggesting that the Company
21 start its general rate case process in August of last
22 year. I'm suggesting the Company had sufficient
23 foresight and knowledge to start the process several
24 months prior to August. When they first became aware
25 that this was going to be an issue, they could have

1 started that process.

2 In my mind, it's like, okay, if I'm doing a
3 big project and if I've got a huge project that I've got
4 to do in the past, we would start that project knowing
5 that some of that information isn't going to become
6 available until towards the end, and often you're
7 waiting to file something for a day or two --
8 impatiently waiting for that information to come in, and
9 as soon as it comes in, you update your stuff and then
10 you hit the "go" button, kind of thing.

11 And I realize this. You know, filing a
12 general rate case -- I -- I don't even envy the people
13 who have to review it, let alone the people that have to
14 prepare it. Okay? That's a big issue. That's a huge
15 lift. I understand that, but they could have started
16 that when they first knew. And if they couldn't get it
17 done and they gave a yeoman's effort to do that, then we
18 say, "Okay, something's wrong here. What do we do now?
19 Okay. Because this isn't working." But we don't have
20 the -- we don't have the ability to say, "This isn't
21 working. We have to find something to help the
22 Company."

23 I don't want the Company to be unhealthy
24 financially. That doesn't speak well for me as a
25 ratepayer. I like to turn the lights on. I like to

1 have them come on when I turn them on. I like my air
2 conditioner to come on when I want it to come on, you
3 know. So I am not opposed to the Company being healthy.

4 I believe the Company should have sought the
5 normal and traditional ratemaking process here. They
6 had enough foresight. They chose not to do that, and
7 they relied on an ability to do deferred accounting.
8 And in this instance it's like, wait a minute. Deferred
9 accounting is not an alternative to choose either this
10 or this. It's, no, choose this. If this isn't working,
11 then we've got an emergency that we can use to help make
12 it okay. But it appears the Company chose to not do the
13 normal ratemaking process and instead chose to just
14 substitute in deferred accounting, which that's not the
15 intent for deferred accounting.

16 Q. So wouldn't you agree that deferred accounting
17 is only available to the Company in very limited
18 circumstances where it can establish that the increases
19 are extraordinary and unforeseeable?

20 A. I believe deferred accounting is an exception
21 to the normal ratemaking process. Deferred accounting
22 has an important role to play, and unforeseen,
23 extraordinary circumstances in an event -- surrounding
24 an event are definitely things to be considered
25 carefully and with importance, whether that deferred

1 accounting order should be granted or should be denied.

2 Q. So turning back to your surrebuttal testimony
3 on page 3, lines 57 through 60.

4 A. This gives me hope that you're going to get to
5 line 63.

6 Q. Well, in that case --

7 A. Okay.

8 Q. In that case I probably won't.

9 (Reporter clarification.)

10 Q. (BY MS. McDOWELL) But I suspect your counsel
11 may.

12 All right. Well, let me get back to my
13 questions, which are --

14 A. I think 57 through 60, if I recall.

15 Q. Yes. Thank you. So you indicate there that
16 "Frequent and improper use of deferred accounting also
17 runs the risk of diluting the general ratemaking
18 process, turning ratemaking into a reimbursement
19 exercise instead of a prospective process, which can
20 misalign management incentives."

21 Do you recall that testimony?

22 A. Yes.

23 Q. Now, the Company certainly does not routinely
24 file deferred accounting applications, does it?

25 A. I believe the -- the rate at which they have

1 filed deferred accounting orders, while I've been here
2 for the last seven or eight years, would not -- I would
3 not deem that to be routine.

4 Q. So, now, this is subject to check, but isn't
5 it true that since the Commission last set the Company's
6 rates in its last rate case in 2020, the Company has
7 filed only one other deferred accounting application,
8 and that was in Docket 23-035-30? Are you aware of
9 that?

10 A. Not by docket number. I do know, you know,
11 something akin to a deferred accounting order. I know
12 in the last general rate case, the Company filed for a
13 balancing account with regard to pensions. I also know,
14 if I recall, there was a deferred accounting order filed
15 in connection with COVID-type issues.

16 Q. But that was pre the last general rate case,
17 wasn't it?

18 A. I don't recall when the COVID one was filed.
19 It may have been prior to at least an order on -- on the
20 last general rate case. It may have been filed while
21 that rate case was pending. I just don't recall.

22 Q. Would you accept, subject to check, that in
23 the four years since the Commission last set the
24 company's rates, this current docket is the only
25 instance in which the Company has sought deferred

1 accounting and not withdrawn the petition prior to
2 hearing?

3 A. Sorry. Did you say 20- -- 23-035-40? Is that
4 the one you're referring to?

5 Q. 0 -- 035-40, which is also --

6 (Cross-talk.)

7 A. Which is this docket; correct?

8 Q. (BY MS. McDOWELL) 23-035-30 was a deferral
9 that was withdrawn.

10 A. Right.

11 Q. And then this deferral --

12 A. Right.

13 Q. -- which is now pending in that hearing is
14 the -- would you accept, subject to check, that this is
15 the only deferred accounting petition the Company has
16 filed since its last general rate?

17 A. Sure. With the note that, you know, there
18 were a couple of other things. Those are the two more
19 recent ones that I remember -- was the balancing account
20 for pensions and the -- the COVID-related deferred
21 accounting order.

22 Q. So based on that history, isn't it fair to say
23 the Company has not engaged in frequent and improper use
24 of deferred accounting?

25 A. Yeah. Like I said, during my tenure here, I

1 would have to agree that I don't think that they've been
2 filed frequently.

3 MS. McDOWELL: That's all I have. Thank you
4 so much Mr. Einfeldt.

5 PRESIDING OFFICER: Ms. Schmid, any redirect?

6 MS. SCHMID: Very limited. Thank you.

7 REDIRECT EXAMINATION

8 BY MS. SCHMID:

9 Q. Mr. Einfeldt, you were asked a series of
10 questions concerning the guidelines that Mr. Thomson
11 addressed in the Powerdale docket and other dockets in
12 2006-2007. Do you recall that line of questioning?

13 A. Yes.

14 Q. Do you agree that the Division is not bound by
15 this set of guidelines that was attached to Rocky
16 Mountain Power Cross Exhibit 1?

17 A. Yes. And hopefully in my response I -- I
18 tended or I intended and hopefully made clear that this
19 is a guide. It is not rules. It is meant to be a
20 guide, and it is not an exhaustive list of items that we
21 consider. I wish it was so easy but -- anyway.

22 Q. You were asked some specific questions about
23 certain lines in your testimony, and I'd just like to go
24 over a couple of them to make sure that they were read
25 in context in the record.

1 Could you please turn to your direct page 7,
2 lines 123-124. Are you there?

3 A. Yes.

4 Q. Could you please read the entire sentence that
5 begins on line 123 and ends on 124.

6 A. "While one could not have guessed in 2020 that
7 rates would rise to where they are now, one could see
8 them rising in the years after 2020."

9 Q. Is it your testimony that the Company could
10 see insurance rates rising after 2020?

11 A. Yes.

12 Q. Just one moment.

13 You were also asked a series of questions
14 about whether the Company has filed any requests for a
15 deferred accounting order since its last general rate
16 case which was filed in 2020. Do you recall that line
17 of questioning?

18 A. Yes.

19 Q. Do you agree that perhaps the best way to
20 determine what the Company has filed regarding deferred
21 accounting requests since that general rate case would
22 be to look at the Commission's docket sheets for the
23 years rather than rely on memory?

24 A. Yes, that would -- especially when you get as
25 old as me.

1 Q. You were also -- if I recall correctly, and
2 please let me know if I am misstating -- but did
3 Ms. McDowell's line of questions address regulatory lag
4 and whether or not the Company would be able to recover
5 amounts before a rate case was filed?

6 A. Now you're asking me to test my memory here.
7 You know, I don't recall that we specifically mentioned
8 memory lag -- or memory lag. Which is what I'm
9 suffering from -- but regulatory lag. I think there was
10 some inference or reference to, you know, the regulatory
11 lag challenge.

12 Q. Okay. I'll build on that. Do you agree that
13 regulatory lag is a common occurrence in Commission
14 proceedings involving regulating public utilities in
15 your experience?

16 A. I am a CPA. I am an accountant. I am a
17 financial guy. I would like to see things done a whole
18 lot faster than what they are, and, yes, I am aware of
19 the frustrating concept and the frustrating reality of
20 regulatory lag, which would drive me crazy if I worked
21 for the Company.

22 Q. We're going to skip over that.

23 A. I'm just being truthful.

24 Q. We know, and we appreciate that.

25 Are you generally familiar with the energy

1 balancing account process that the Company goes through
2 before the Utah Commission?

3 A. I am aware of it -- I am aware that it
4 happens. I am aware of it, generally, on a very high
5 level basis. I am not as familiar with the intimate
6 details of it all.

7 Q. Based upon your knowledge, do you agree that
8 recovery in an EBA docket has regulatory lag because the
9 EBA request is filed after a year has concluded?

10 A. Yes, yes.

11 Q. Those are all my questions, my redirect
12 questions. Thank you.

13 PRESIDING OFFICER: Any requests for recross?

14 MS. McDOWELL: No. But I did neglect to offer
15 the two cross exhibits that I asked Mr. Einfeldt about.
16 So I'd like to do that now.

17 PRESIDING OFFICER: Hearing no objection,
18 they're admitted.

19 (RMP Cross Exhibits 1-2 admitted into
20 evidence.)

21 MS. McDOWELL: Thank you.

22 PRESIDING OFFICER: We will turn to
23 Commissioner questions.

24 Commissioner Harvey?

25 COMMISSIONER HARVEY: I guess I can still say

1 good morning. Twenty minutes.

2 EXAMINATION

3 BY COMMISSIONER HARVEY:

4 Q. I also have a couple questions about
5 regulatory lag. First of all, I'm assuming you've been
6 with the Division long enough that you have a pretty
7 good understanding of what you might refer to as the
8 purpose of regulatory lag in providing incentives to the
9 Company?

10 A. I am -- I have been aware. I'd probably fail
11 the test if I had to regurgitate it right here, but yes.

12 Q. Okay. Thank you.

13 A. I am aware that there are incentives there.
14 I'm also aware that it is a condition that is likely not
15 going away any time soon because it's just -- there's a
16 process, and the process creates regulatory lag that
17 people -- that companies and parties at interest have
18 been able to adapt to over -- over the generations.

19 Q. Indeed. I actually wasn't going to ask this,
20 but now I think I need to. So if I -- if I think about
21 the way regulatory lag operates, rates are set, the
22 utility then -- and basically what I'm going to ask is,
23 is this your understanding?

24 Rates are set. The utility then goes out and
25 tries to maximize its profits under that just and

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1 reasonable rate structure, and that typically results in
2 them lowering costs wherever they can, and then in the
3 next rate case, because of the laws, they have to reveal
4 that those costs are lower, and that results in, over
5 time, rates being pushed to a just and reasonable level.

6 Does that match with what you would think of
7 as the incentives that regulatory lag imposes?

8 A. That would be some of the incentives. I mean,
9 regulatory lag cuts on both sides of the line, whether
10 it's revenue and -- and something that's beneficial to
11 the company's bottom line and also something that's
12 detrimental to the company's bottom line. So that
13 regulatory lag is an effect on both sides of that line.

14 Q. And following up on that idea, does the
15 company always have the option of filing a rate case
16 whenever it decides that the costs and revenues have
17 changed to such a degree that the cost of filing a rate
18 case can be justified?

19 A. That is my understanding, yes.

20 Q. And as a follow-up to that, if the costs and
21 revenues change the other way, would the Division always
22 have the option of requesting that a rate case be opened
23 if they thought the -- the scales had swung the opposite
24 direction?

25 A. That is my understanding also, yes.

1 Q. So is there anything in the opinion of the DPU
2 about the insurance costs that would make these costs
3 unique as a cost within the regulatory lag framework?

4 A. I hate to ask this. Can you reask me that
5 question --

6 Q. I will try to.

7 A. -- or restate it?

8 (Reporter asks if they need a read back.)

9 A. Your choice.

10 Q. (BY COMMISSIONER HARVEY) Let me try to
11 rephrase it more simply.

12 Given the background that regulatory lag both
13 provides incentives and that the Company has the choice
14 of when they're going to file rate cases, is there
15 anything unique about these particular insurance costs
16 that would, in the DPU's opinion, separate them from any
17 of the other costs that the utilities deem it would?

18 A. They are certainly -- it's certainly a large
19 increase, but at this point, we don't have the ability
20 to compare that to others. I do have indication in
21 their testimony that there are some other significant
22 things going on to limit their revenue or their earning
23 to 4.58 percent, if I stated that correctly, compared to
24 their authorized rate of return of 6 -- 9.65 percent.
25 That's a significant decrease. Makes me wonder what

1 else is going on? And -- because that's a 510 basis
2 point change, and the insurance increase is a 90 -- a 90
3 basis point change. There's a lot of basis point change
4 there that is -- doesn't appear to be -- that's going on
5 that's detrimental to the Company.

6 And I'm just like, okay, we need to understand
7 this. Almost to the point that, okay, if you guys
8 aren't healthy enough to continue, maybe the DPU needs
9 to encourage a general rate case -- and I'm just talking
10 off the top of my head now. Maybe we don't ask them to
11 come in just when they're making a whole lot of money,
12 but maybe we ask them to come in when they're not making
13 a whole lot of money, if that's fair enough.

14 Q. Okay. Earlier, when I was talking with one of
15 RMP's witnesses, we identified that if the Company
16 receives the -- the deferred accounting order and then
17 filed a rate case, that that would allow them to recover
18 all of the extraordinary costs, but if they had done
19 what the DPU has talked about in its testimony of just
20 filing a rate case right away, however early that might
21 be, that there would still be a gap?

22 A. Yes. There -- there would be a small gap.
23 We -- as we have talked about it, there likely would
24 have been a small gap for a few months -- is what we
25 would have -- what we had concluded, and it's how do you

1 get around that? I wish we could.

2 Q. And so that -- that's my follow-up question
3 is, is it the DPU's position that that gap should just
4 be thought of as a cost of doing business, or is it
5 something that we should be more worried about?

6 A. That cost -- that cost -- that gap is
7 basically the cost of doing business, and it's part of
8 the normal traditional ratemaking process that -- that's
9 that part that, for me as an accountant, it's like, "Why
10 can't we do this faster?" But I -- I realize that
11 frustration is not going away.

12 Q. Okay.

13 A. I wish I was also 6 foot 5 or something and
14 280 pounds and playing defensive end for the Oakland
15 Raiders, but that didn't happen either. So --

16 Q. You done?

17 A. I'm done.

18 Q. Okay. Final question. There's been
19 discussion between RMP's attorney and yourself about the
20 guidelines that had been offered in testimony in a
21 previous case. And I believe in looking at the
22 Division's data response this is clear, but I want to
23 make sure it's in the record. Those guidelines are a
24 Division document that are not binding on -- on the
25 Commission; correct?

1 A. That's correct.

2 Q. Thank you. That's all my questions.

3 PRESIDING OFFICER: Commissioner Clark?

4 COMMISSIONER CLARK: No questions. Thank you.

5 PRESIDING OFFICER: I have none. Thank you,
6 Mr. Einfeldt.

7 MR. EINFELDT: Thank you.

8 PRESIDING OFFICER: Ms. Schmid, do you have
9 any other witnesses?

10 MS. SCHMID: The Division does not. Thank you
11 very much.

12 PRESIDING OFFICER: Mr. Moore?

13 MR. MOORE: Yes. The office calls Alyson
14 Anderson and asks that she be sworn.

15 PRESIDING OFFICER: Ms. Anderson, do you swear
16 to tell the truth?

17 MS. ANDERSON: I do.

18 PRESIDING OFFICER: Thank you.

19 Go ahead, Mr. Moore.

20 ALYSON ANDERSON

21 was sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MOORE:

24 Q. Could you please state your name, business
25 address, and occupation for the record, please.

1 A. Yes. My name is Alyson -- can you hear me?

2 Q. Yes.

3 A. My name is Alyson Anderson. I am a utility
4 analyst employed at 160 East 300 South in Salt Lake
5 City, Utah.

6 Q. As part of your duty as the utility analyst,
7 have you reviewed the application and the other filings
8 in this docket?

9 A. I have.

10 Q. Did you prepare and cause to be filed direct
11 testimony on November 29th, 2023, and surrebuttal
12 testimony on January 9th, 2023?

13 A. I did.

14 Q. I think --

15 A. '24.

16 Q. -- 2024?

17 A. Yeah.

18 Q. Do you have any changes you'd like to make to
19 that testimony at this time?

20 A. No.

21 Q. If I asked you the same questions in your
22 testimony, would your answer be the same?

23 A. Yes.

24 MR. MOORE: At this point I'd move to admit
25 her prefiled testimony.

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PRESIDING OFFICER: It's admitted.

(Direct and Surrebuttal Testimony of
Alyson Anderson admitted into evidence.)

Q. (BY MR. MOORE) Have you prepared a summary of
the OCS's position in this case?

A. Yes.

Q. Please proceed.

A. Good morning, still. My testimony provides
the OCS's recommendation regarding Rocky Mountain Power
Company's application for deferred accounting order
related to the costs associated with increased insurance
premiums.

As outlined in the OCS prehearing brief, Rocky
Mountain Power did not quantify the amount of the
increase in insurance premiums attributable to the James
verdict. Therefore, the OCS recommends that the
application be denied as Rocky Mountain Power failed to
carry its initial burden of proof that it is likely that
the amount deferred will be recoverable in rates.

In my testimony, I provided an alternative of
a sharing expense between ratepayers and shareholders if
the Commission decides not to deny the application.

This concludes my summary.

MR. MOORE: Ms. Anderson is now available for
cross and questions by the Commission and the Presiding

1 Officer.

2 PRESIDING OFFICER: Ms. Schmid?

3 MS. SCHMID: No questions.

4 PRESIDING OFFICER: Mr. Russell?

5 MS. McDOWELL: No questions. Thank you.

6 PRESIDING OFFICER: Ms. McDowell?

7 MS. McDOWELL: No questions. Thank you.

8 PRESIDING OFFICER: Commissioner Harvey?

9 COMMISSIONER HARVEY: Well, I was thinking of
10 questions.

11 EXAMINATION

12 BY COMMISSIONER HARVEY:

13 Q. I do want to ask one question about the -- the
14 secondary proposal you made.

15 A. Yes.

16 Q. And I -- and I guess that the question would
17 relate to the mechanics of how that could be done, and
18 so I guess what I'm asking is what type of additional
19 proceedings and what type of evidence would you think
20 would be needed to -- to establish what a just and
21 reasonable sharing amount would be between ratepayers
22 and shareholder?

23 A. Well, I think it comes down to we would be
24 able -- we would need to be able to identify what
25 portion of the increase is attributable to any negligent

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1 verdicts against the Company and what portion is just
2 the general climate. And, you know, part of the reason
3 why I thought that was because if it's related to the
4 negligence, it's, by nature, imprudent and, therefore,
5 shouldn't be recovered from ratepayers and, therefore,
6 there would be no need for a deferred accounting order
7 for that piece of it. And so I hope that answers your
8 question.

9 Q. Yes. But -- and then, to be clear, that type
10 of determination couldn't be made on the current record?

11 A. Correct. And that's why the OCS, you know, in
12 our brief, we outlined we're recommending that it just
13 be denied because we can't identify that.

14 Q. Okay. Thank you. That's my questions.

15 A. Okay.

16 PRESIDING OFFICER: Commissioner Clark?

17 EXAMINATION

18 BY COMMISSIONER CLARK:

19 Q. Ms. Anderson, in examining the application,
20 did you investigate the differences in the coverage
21 levels between those that were in existence before the
22 new policy for which the premiums are under
23 consideration in this docket?

24 A. Outside of what was in the Company's testimony
25 and application, no. I mean, we did ask discovery and

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KEVIN C. HIGGINS

was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. RUSSELL:

Q. Mr. Higgins, could you state and spell your name for the record, please.

A. My name is -- my name is Kevin C. Higgins, K-e-v-i-n, middle initial C, H-i-g-g-i-n-s.

Q. And by whom are you employed?

A. I'm employed as a principal with the consulting firm Energy Strategies.

Q. And on whose behalf do you offer testimony in this proceeding?

A. I'm here on behalf of Utah Association of Energy Users intervention group.

Q. And did you file or cause to be filed direct testimony labeled as UAE Exhibit 1.0 on November 29 of 2023?

A. Yes, I did.

Q. All right. And with respect to that testimony, do you have any corrections to make?

A. I do not.

Q. And if asked the same questions today that were posed in your prefiled testimony, would you provide the same answers?

1 A. Yes, I would.

2 MR. RUSSELL: Okay. And I'll move for
3 admission of Mr. Higgin's direct testimony.

4 PRESIDING OFFICER: It's admitted.

5 (Direct Testimony of Kevin C. Higgins
6 admitted into evidence.)

7 Q. (BY MR. RUSSELL) And have you prepared a
8 summary of that direct testimony?

9 A. Yes, I have.

10 Q. Please proceed.

11 A. Thank you. Good morning, Commissioners and
12 Judge. UAE recognizes that the request -- that requests
13 for deferred accounting are attempts to engage in
14 single-issue ratemaking, which, absent a compelling
15 public interest, is contrary to sound ratemaking
16 practice, but exceptions are permissible. And in this
17 case I do not dispute Rocky Mountain Power's
18 characterization of the increase in its excess liability
19 insurance premiums as material, extraordinary, and
20 unforeseen, which are among the key criteria for
21 determining whether the granting of a cost deferral is
22 appropriate.

23 Consequently, UAE does not oppose the
24 Company's request for a deferred accounting order for
25 authorizing it to record a regulatory asset associated

1 with incremental costs from increased excess liability
2 insurance premiums for the policy period beginning in
3 August of 2023, subject to certain caveats, recognizing
4 that a deferred accounting order does not guarantee
5 recovery of the deferred amount.

6 The specific amount that is ultimately
7 recoverable should be determined in Rocky Mountain
8 Power's next general rate case and should be based on a
9 Commission finding that the amount of costs being
10 allocated to customers is just and reasonable.

11 Such a finding should consider all relevant
12 factors, including the proper allocation of costs to
13 PacifiCorp from its parent Berkshire Hathaway Energy
14 Company, the proper allocation of cost among
15 PacifiCorp's jurisdictions, and the extent to which the
16 increase in insurance premiums may not be recoverable
17 because they are attributable to costs caused by the
18 Company, such as damages awards in which PacifiCorp was
19 found to be grossly negligent and reckless.

20 That concludes my summary.

21 Q. Thank you, Mr. Higgins.

22 MR. RUSSELL: The witness is now available for
23 cross-examination and Commissioner questions.

24 PRESIDING OFFICER: Ms. Schmid?

25 MS. SCHMID: No questions.

1 PRESIDING OFFICER: Mr. Moore?

2 MR. MOORE: No questions. Thank you.

3 PRESIDING OFFICER: Ms. McDowell?

4 MS. McDOWELL: No questions. Thank you.

5 PRESIDING OFFICER: Commissioner Harvey?

6 COMMISSIONER HARVEY: No time to think.

7 COMMISSIONER CLARK: While you're thinking,
8 I'll say no questions. Sorry.

9 EXAMINATION

10 BY COMMISSIONER HARVEY:

11 Q. I just want to make sure I understand the
12 implications of what UAE is recommending. So is this a
13 fair summary? Grant the -- the PSC should grant, in the
14 sense, permission to keep track of costs with absolutely
15 no indication of likelihood of recovery or anything else
16 and then all of that be determined at a later date.

17 A. Very close. Specifically, we're not opposing
18 the Company's request, with that slight clarification.
19 We're not here as an advocate for it, per se, but we're
20 not opposing it because of what I explained in my
21 testimony.

22 With -- with regards to likelihood of
23 recovery, I believe that a possible outcome of a
24 deferred accounting case that is considered -- or a
25 deferred accounting request that is considered in a

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1 general rate case is that zero of it gets recovered. So
2 I do believe that that is within the feasible set, and
3 I've been in cases in which that has occurred, in which
4 deferred accounting was allowed and then ultimately
5 denied in its entirety.

6 But with respect to your question about
7 likelihood of recovery, you know, I am -- I am aware
8 that, in an accounting sense, there is an expectation
9 that if -- if deferred accounting is granted, there must
10 be -- that it would be done with some likelihood of
11 recovery, but the extent to that -- of that amount to be
12 recovered and ultimately whether it will be recovered
13 can still be determined in a general rate case.

14 Q. Thank you. That's all I have.

15 PRESIDING OFFICER: You continue to have no
16 questions, Commissioner Clark?

17 COMMISSIONER CLARK: I reaffirm. No
18 questions.

19 PRESIDING OFFICER: I'll confer with the
20 commissioners before we adjourn, but let me ask the
21 parties first if there's anything else we need to
22 address.

23 MS. McDOWELL: Yes, Your Honor. We -- as I
24 understand it, the prehearing conference -- the schedule
25 included a prehearing brief with the idea that

1 potentially the Commission might find it helpful to have
2 a post-hearing brief because of the legal issues that
3 deferred accounting raises, and we -- I think, in our
4 view, that would be helpful here because of the legal
5 issues, some of which have been raised by Commission
6 questions.

7 So we would propose to, you know, in a fairly
8 expedited fashion, once the -- we have the transcript,
9 to prepare a short post-hearing brief, if that's
10 acceptable to the Commission.

11 PRESIDING OFFICER: All right. Would
12 two weeks after transcripts are delivered be expedited,
13 in your view?

14 MS. McDOWELL: Yes. I think that would work
15 fine. Thank you.

16 PRESIDING OFFICER: Ms. Schmid?

17 MS. SCHMID: If the Commission believes that a
18 post-hearing brief would be helpful, the Division is
19 happy to provide one.

20 PRESIDING OFFICER: Mr. Moore?

21 MR. MOORE: Simply a post-hearing brief may be
22 difficult. There is considerable differences in what
23 the OCS wrote in its post-hearing [sic] brief and what
24 Rocky Mountain Power wrote in its post-hearing [sic]
25 brief. Considering that, I would like a chance to

1 reply, rather than just submit another one concurrently,
2 if the Commission feels that a post-hearing brief would
3 be appropriate.

4 PRESIDING OFFICER: Ms. McDowell, you wouldn't
5 have any objection to the post-hearing briefs including
6 responses to the prehearing briefs?

7 MS. McDOWELL: I think that's appropriate.
8 Thank you.

9 PRESIDING OFFICER: Mr. Russell?

10 MR. RUSSELL: UAE did not file a prehearing
11 brief. Given the nature of our position in this, it
12 didn't seem like it would be all that helpful. I doubt
13 we'll provide a post-hearing brief. With all that said,
14 I don't object to the requests.

15 COMMISSIONER CLARK: From my perspective, I'm
16 certainly happy to review post-hearing briefs, including
17 replies to the arguments in the initial briefs. I would
18 just encourage you and state that you don't need to
19 repeat what was in the -- in the initial briefs. We've
20 read them carefully. We understand their content and
21 reasoning, and so I would encourage you just to -- just
22 to provide anything additional that you feel is
23 necessary, any legal argument in relation to facts that
24 have been discussed here at hearing that either are
25 different than what you initially anticipated or

1 something you feel you need to either respond to or
2 elaborate upon, but please don't feel the need to repeat
3 what you've already said. Thank you.

4 MR. MOORE: Pardon me. There's a little
5 problem with determining when the briefs are due because
6 we don't know when the transcript is due, and I am
7 scheduled for surgery in the 23rd of February, and I
8 will be unable to work for a period, and I'm the only
9 lawyer for the OCS. So just with the caveat that I be
10 allowed time in case the transcript comes out in a way
11 that interferes with my ability to respond because of
12 the surgery.

13 PRESIDING OFFICER: Certainly. We will issue
14 a notice regarding our decision to allow post-hearing
15 briefs and the contemplated time frame, and then when
16 the transcript comes in, we'll issue something else.
17 And then if that's going to be a conflict for anyone, of
18 course they'll be free to file a motion for an
19 extension.

20 COURT REPORTER: I can have this in next week.

21 PRESIDING OFFICER: Do we have to request that
22 expedited?

23 COURT REPORTER: It's okay. I'll just have it
24 in. It's okay.

25 MR. MOORE: I'm sorry. That provides another

1 problem that we have two more hearings and a Century
2 Link hearing on the 31st. So the two weeks is kind of
3 problematic with our current schedule.

4 PRESIDING OFFICER: Would 30 days work better
5 for you? 30 days after receipt of the transcript?

6 MR. MOORE: That should work. I'm sorry for
7 my --

8 PRESIDING OFFICER: It's quite all right.

9 Ms. McDowell?

10 MS. McDOWELL: That's acceptable. Thank you.

11 PRESIDING OFFICER: All right. Give me one
12 moment to confer with the Commissioners.

13 All right. If there's nothing else from the
14 parties, then we are adjourned.

15 (This hearing was concluded at
16 12:07 p.m. MT.)

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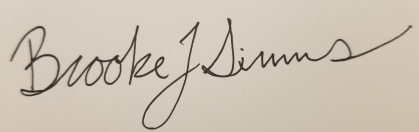
REPORTER'S CERTIFICATE

STATE OF UTAH)
)
COUNTY OF UTAH)

I, BROOKE SIMMS, an Idaho Certified Shorthand Reporter, Utah State Certified Court Reporter, and Registered Professional Reporter, hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth in the caption hereof; that the proceedings were taken down by me in shorthand and thereafter my notes were transcribed through computer-aided transcription; and the foregoing transcript constitutes a full, true, and accurate record of such oral proceedings had, and of the whole thereof.

I have subscribed my name on this 24th day of January, 2024.



Brooke Simms, RPR, CCR, CSR
Idaho CSR No. 1174
Utah CCR No. 12335391-780

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[a.m. - affiliated]

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[afford - approve]

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[deferral - discretion]

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[oregon - percent]

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Utah Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(E) Submission to Witness; Changes; Signing.

Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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