

## Hearing - January 22, 2026

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

\*

Rocky Mountain Power's \*  
Application for Approval of the \* Docket No. 25-035-01  
2025 Energy Balancing Account \*

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HEARING ON A SETTLEMENT STIPULATION

January 22, 2026

9:00 a.m. to 9:52 a.m.

Hearing Room 403, Heber M. Wells Building

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Reported by: Spencer Von Jarrett, RPR No. 993793

1 A P P E A R A N C E S  
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5 COMMISSIONER DAVID R. CLARK  
6 COMMISSIONER DR. JOHN SWENSON HARVEY  
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1 P R O C E E D I N G S

2 [On the record at 9:00 a.m.]

3 CHAIR FENN: Good morning, everyone. Welcome to the Public  
4 Service Commission hearing this morning.

5 We're here in the matter of Rocky Mountain Power's  
6 application for approval of the 2025 Energy Balancing Account, or  
7 EBA. It's Docket No. 25-035-01.

8 We'll take up a motion that's pending after we take  
9 appearances for the record. Let's start with Rocky Mountain Power.

10 MS. SMITH: Good morning. Katherine Smith on behalf of  
11 Rocky Mountain Power.

12 CHAIR FENN: Good morning, Ms. Smith. Welcome.

13 MR. GRECU: Patrick Grecu on behalf of the Division of  
14 Public Utilities.

15 CHAIR FENN: And with you is?

16 MR. GRECU: Mr. Gary Smith.

17 CHAIR FENN: And he'll be your witness today, right?

18 MR. GRECU: That's correct.

19 CHAIR FENN: Well, I should have asked you, Ms. Smith:  
20 Who is going to be your witness?

21 MS. SMITH: Our witness we brought today is Jeff Painter.  
22 However, if the commissioners have any questions about Robert  
23 Meredith's testimony, we can make Mr. Elder available.

24 CHAIR FENN: He's not currently online, is he? No, we  
25 have no one online. Is he here; is Mr. Elder here?

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1 MS. SMITH: No.

2 CHAIR FENN: We could get him on?

3 MS. SMITH: He is on standby.

4 CHAIR FENN: Got it. Okay.

5 And then --

6 MR. COOK: Jeremy Cook appearing for Nucor Steel Utah. And  
7 Nucor doesn't oppose a settlement and we don't intend to put on any  
8 witnesses and didn't file any testimony. So we'd just ask to be  
9 excused from the hearing.

10 CHAIR FENN: Meaning you don't want to sit through this?

11 MR. COOK: I mean, I'm happy to sit through it. Just we  
12 don't need to be involved, so.

13 [PRELIMINARY MOTIONS]

14 CHAIR FENN: Okay. Well, that's the first thing we'll take  
15 up.

16 Is there any objection to excusing Mr. Cook?

17 All right. We'll excuse Mr. Cook on behalf of Nucor Steel.  
18 Thank you for making an appearance to at least note your  
19 non-opposition. Thank you.

20 MR. COOK: Thank you.

21 CHAIR FENN: Okay. Ms. Smith filed a motion to excuse Mr.  
22 Robert Meredith we weren't able to review this last evening. It came  
23 in quite late in the day, but we think she probably assumed we'd  
24 grant this motion.

25 Mr. Grecu, do want to object?

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1 MR. GRECU: No, I do not.

2 CHAIR FENN: Okay. I didn't think you would.

3 Okay. All right. Any objection? There's no objection  
4 among the commissioners, I'm sure.

5 Okay. We'll excuse Mr. Meredith from participating in the  
6 hearing today.

7 [ON A SETTLEMENT STIPULATION]

8 CHAIR FENN: Okay. So we're here on a settlement  
9 stipulation. And the company sought to recover 471.6 million in  
10 deferred EBA costs and the Division recommended a reduction of  
11 \$9,018,316 in the EBA.

12 And my understanding is that the parties have agreed to an  
13 adjustment of 4.51 million to the original amount, which will result  
14 in an EBA recovery of \$467,105,308.

15 Is that correct; does that sound right?

16 MS. SMITH: Yes.

17 MR. GRECU: Yes, that's correct.

18 CHAIR FENN: Okay. All right. Well, I just wanted to get  
19 that on the record. That's the heart of the matter that we're here  
20 to discuss.

21 So we'll first have Rocky Mountain Power call its witness.

22 MS. SMITH: Thank you. Rocky Mountain Power calls Jack  
23 Painter as its first witness.

24 CHAIR FENN: Okay. Mr. Painter, welcome.

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1 JACK PAINTER,

2 a witness herein, having been administered an oath,  
3 was examined and testified as follows.

4 EXAMINATION

5 BY MS. SMITH:

6 Q. Mr. Painter, can you state and spell your name for the  
7 record?

8 A. Yes. Jack Painter: J-A-C-K, P-A-I-N-T-E-R.

9 Q. And what is your role with the company?

10 A. I am a Net Power Cost Adviser.

11 Q. Have you caused to be filed direct testimony in this  
12 proceeding?

13 A. I have.

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

15 A. I do not.

16 Q. And if I asked you the same questions as listed in your  
17 testimony, would your answers be the same?

18 A. Yes.

19 Q. And in your role, have you reviewed the settlement  
20 stipulation filed in this docket on December 5th, 2025?

21 A. I have.

22 Q. Do you have a summary of that?

23 A. I do.

24 Q. Please proceed.

25 A. Good morning, Chair Fenn, Commissioner Clark, and

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1       Commissioner Harvey. My name is Jack Painter. I'm a Net Power Cost  
2       Adviser for Rocky Mountain Power.

3               The company filed its annual EBA application on May 1st,  
4       2025 for the deferral period of January 2024 through December 2024.

5       The company sought recovery of \$471.6 million consisting of:

6               \$474.9 million for the deferral of excess EBA cost,  
7       calculated as the difference between actual cost and base rates for  
8       net power cost, willing revenue, and production tax credits;

9               A \$24.9 million credit for sales made to a special  
10      customer;

11               A \$9.2 million adjustment for Utah situs resources;

12               A \$24.2 million credit to reflect the 2024 EBA order;

13               And \$36.5 million in costs and credits related to smaller  
14      items and interest.

15               The Division of Public Utilities and its consultant,  
16      Daymark, issued its annual EBA audit report on November 5th, 2025 and  
17      proposed a reduction to the company's EBA application of  
18      approximately \$9 million on a Utah-allocated basis for three forward  
19      market transactions. No other parties filed testimony in this  
20      proceeding.

21               The company and the DPU reached an all-issue settlement  
22      agreement on November 20th, 2025, and the settlement stipulation was  
23      filed with the Commission on December 5th, 2025.

24               Settlement terms included a \$4.5 million unspecified  
25      reduction to the EBA and an agreement by the company to make a filing

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1 with the Commission before March 1st, 2026 reporting on progress to  
2 improve its governance, review, and pre-approval process for power  
3 physical transactions. After the unspecified adjustment, the final  
4 EBA recovery is \$467,105,308.

5 On behalf of Rocky Mountain Power, I respectfully request  
6 the Commission approve the filed EBA settlement stipulation which  
7 resolves all issues in the EBA. Thank you.

8 CHAIR FENN: Thank you for your summary, Mr. Painter.

9 Anything else, Ms. Smith, before we turn him over?

10 MS. SMITH: Yes; I would just like to move for admission  
11 for all pre-filed testimony, associated exhibits, and the settlement  
12 stipulation.

13 CHAIR FENN: That's a good idea. Thank you.

14 Without objection, we'll admit the pre-filed testimony and  
15 exhibits.

16 [Pre-filed testimony, exhibits, and stipulation admitted.]

17 Okay. Mr. Grecu, do you have questions of Mr. Painter?

18 MR. GRECU: No questions. Thank you.

19 CHAIR FENN: Okay. I just -- before we go to the  
20 Commission questions:

21 We heard from Nucor Steel, who was here. I think there was  
22 -- did the Utah Association of Energy Users -- they intervened in the  
23 docket, did they not?

24 MS. SMITH: Correct.

25 CHAIR FENN: Okay. And you've had discussions -- one of

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1 the parties have had discussions with them. Do we know --

2 They never filed any testimony. I assume we can conclude  
3 they have no objection.

4 But do you have any specific recollection of communications  
5 with them you can refer to?

6 MS. SMITH: Yes. I'd say we're in frequent communication  
7 with all the parties. On matters relating to this procedure, UAE did  
8 specify that they have no objection to this settlement stipulation  
9 and they do not intend to bring a witness today.

10 CHAIR FENN: Okay. Well, it was referenced in the preamble  
11 of your settlement stipulation that they filed it prior to testimony  
12 being filed by other intervening parties. You're committed to  
13 working with other intervening parties on further settlement  
14 discussions once they filed testimony; they didn't file testimony.

15 I think it was a logical conclusion for me to make, but I  
16 wanted to just have you put it on the record that it appears that no  
17 other party is participating besides the Division in this docket.

18 Okay. All right. Let's go to the Commissioners, then, for  
19 questions, clarifying questions that they may have.

20 Commissioner Clark.

21 COMMISSIONER CLARK: Yeah, I don't have any questions.  
22 Thank you.

23 CHAIR FENN: Okay. Commissioner Harvey.

24 COMMISSIONER HARVEY: Just a couple.

25 BY COMMISSIONER HARVEY:

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1                   Q.    As was just mentioned, there was no reply by either  
2                   parties or the company once Daymark and the Division's report was  
3                   filed; is that correct?

4                   A.    My understanding is that after reaching settlement terms  
5                   with the DPU that both the USDS [phonetic] and UAE and other parties  
6                   were notified of the discussions. And no further participation by  
7                   them was indicated.

8                   Q.    Right. I think I wasn't quite clear. I meant after the  
9                   Division's initial testimony that recommended a reduction.

10                  There hasn't been any response in the record other than the  
11                  settlement by the company; is that correct?

12                  A.    That's correct.

13                  Q.    Okay. And given that the settlement amount is different  
14                  than the amount that was recommended in the division's testimony, is  
15                  it a reasonable assumption on my part -- and you can say no if you  
16                  want -- that the company disagreed with the basis for the Division's  
17                  recommended adjustment?

18                  A.    After receiving the testimony filed by the DPU and Daymark,  
19                  the company reviewed the transactions that they called into question.

20                  And while the company believes that the transactions were  
21                  important to meet the system obligations and were prudently incurred,  
22                  it does take into consideration the concerns that the DPU filed about  
23                  its governance review policy and has acknowledged their concerns and  
24                  is working to improve that review process and pre-approval process.

25                  So it's important that the company acknowledges that, and

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1       we were able to reach the settlement terms with the DPU that we think  
2       is a kind of fair-amounts outcome for customers and both the DPU and  
3       the company.

4           Q.    I'm going to ask a follow-up, and if it gets too detailed  
5       into negotiations, feel free to ask your attorney if she thinks you  
6       ought to answer it or not.

7           But is it a fair summary, then, to say that the company  
8       recognized that while they felt the actions were prudent because of  
9       need, that it didn't line up with the policies: and that's why  
10      there's this now new or ongoing effort to either adjust those or at  
11      least examine them and figure out how to implement them going  
12      forward?

13       A.    Yeah, I think that's correct and fair to say.

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

15       A.    Okay.

16           CHAIR FENN: Ms. Smith, I'm going to ask a couple of  
17       questions, and Mr. Grecu, about some statements in the confidential  
18       Daymark report. I'll tell you what page we're dealing with and  
19       paragraph.

20           And if you see any need for me to have a motion to go into  
21       closed session, we can do so. I don't think that this will be  
22       confidential, but it could be.

23       BY CHAIR FENN:

24       Q.    So I want to ask about the collaboration that's referred to  
25       on the third full paragraph on page 5 of the Daymark report.

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1                   Do you have that before you, Mr. Painter?

2                   A.    I do have the Daymark report, yes.

3                   Q.    Okay. I'm just curious. In the second to the last  
4 sentence there, you can read that for yourself, and I'll just read it  
5 into the record.

6                   "The Division and Daymark have been working collaboratively  
7 with the company to improve the quality and robustness of the  
8 company's contemporaneous documentation of trade purpose through  
9 enhanced commercial objective reports and other records."

10                  Could you tell me what it is that you're doing in  
11 collaboration with the Division and Daymark?

12                  A.    Before I answer that:

13                  I'm looking at page 5 of the audit report. Are you  
14 referring to either the executive summary or their testimony?

15                  Q.    Well, I'm referring to page 5 of the actual report. I  
16 think it may be in the summary, the non-confidential summary, but I'm  
17 not sure. I'm looking at the confidential report, and I'm on page 5.  
18 The heading is "Natural Gas and Power Transactions".

19                  A.    Okay. Yes, I am -- I do have that page.

20                  Q.    And it's the second to the last sentence in the third  
21 paragraph that I'm asking about.

22                  A.    Okay. I got you.

23                  I think to answer your question specifically, I am not  
24 directly involved with that process between -- that has to do with  
25 the governance review policy. So I cannot answer to the specifics of

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1 what is being done with that, but that is something that we can  
2 certainly provide you an answer for, I think, via like a bench  
3 request if you would like to have information on that before our  
4 progress report on March 1st.

5 Q. Maybe I can ask the Division witness the question, so that  
6 will probably suffice for now.

7 But you're not involved in those discussions?

8 A. I am not.

9 Q. Okay. There's also a discussion in the next paragraph  
10 about "The company should aggressively seek options for indexed price  
11 products and carefully evaluate their advantages and disadvantages  
12 against fixed price products."

13 Are you involved in that work at all?

14 A. I am not. No, unfortunately not.

15 Q. So you can't testify as to what's occurring there at all?

16 A. No, that is part of our front office/ESM activity and I'm  
17 not involved in that group.

18 Q. Just -- maybe you can elaborate.

19 Do you know who is involved at the -- let's say among the  
20 people who have typically testified in the past at the Commission;  
21 would that be something Mr. Meredith would be involved with or  
22 somebody else; and do you know who it would be that would have the  
23 information on that?

24 CHAIR FENN: Ms. Smith, maybe you know.

25 MS. SMITH: Yeah, I was trying to map that to Mr. Painter.

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1 THE WITNESS: I do.

2 MS. SMITH: It would likely be Mr. Mike Wilding.

3 THE WITNESS: Yes.

4 CHAIR FENN: Okay. We know Mr. Wilding.

5 MS. SMITH: He's presented before.

6 CHAIR FENN: Okay. All right. Great.

7 THE WITNESS: Yeah. Mr. Wilding and Mr. John Fritz, who  
8 has also testified before.

9 CHAIR FENN: And Mr. Wilding may have been present if we  
10 had not settled the case -- entered into a settlement stipulation is  
11 a better way to put it.

12 MS. SMITH: That's a fair assumption, yes.

13 CHAIR FENN: Okay. All right.

14 Okay. Well, I don't think I have any other questions.

15 I think we can excuse Mr. Painter. Thank you for being  
16 here and thank you for your summary. Appreciate it.

17 THE WITNESS: Thank you.

18 CHAIR FENN: Okay. Mr. Grecu, we will let you call your  
19 witness.

20 MR. GRECU: Thank you. The Division calls Mr. Gary Smith.

21 CHAIR FENN: Okay. And as far as the Daymark witnesses,  
22 you're going to refer as necessary to their testimonies; is that  
23 correct --

24 Well, we'll get you under oath before we have him answer  
25 that question. I got ahead of myself there.

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GARY SMITH,

a witness herein, having been administered an oath,  
was examined and testified as follows.

CHAIR FENN: Okay. Now I'll ask the question:

We're not going to offer the testimony of Mr. DiDomenico or Mr. Koehler; is that correct -- live testimony?

MR. GRECU: That's correct.

CHAIR FENN: And Mr. Smith would be able to refer to the Daymark report. And that's going to be part of your summary, I suppose?

THE WITNESS: Yes. I can address that as best I can.

CHAIR FENN: Okay. All right. Great. Thank you.

Okay. Mr. Grecu, we'll turn to you.

MR. GRECU: Thank you.

## EXAMINATION

BY MR. GRECU:

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

A. My name is Gary Smith: G-A-R-Y, S-M-I-T-H.

Q. And by whom are you employed and what is your position?

A. The Division of Public Utilities and I'm a Utility  
Technical Consultant for them.

Q. And your business address?

A. It is 160 East, 300 South, Salt Lake City, Utah.

Q. And have you participated in this docket on behalf of the

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1       Division?

2           A.    Yes.

3           Q.    Did you review the company's filings in this docket and  
4    responses to data requests?

5           A.    Yes.

6           Q.    And did you prepare and cause to be filed your direct  
7    testimony and DPU Exhibits 1.1 DIR through 1.7 DIR on November 5,  
8    2025?

9           A.    Yes.

10          Q.    And do you have any changes or corrections to those  
11    filings?

12          A.    No, I don't.

13          Q.    And if I asked you the same questions posed in that  
14    testimony today, would you provide the same answers?

15          A.    Yes.

16          Q.    Do you adopt your pre-filed direct testimony as part of  
17    your testimony today?

18          A.    Yes.

19            MR. GRECU: I'd like to move to admit Mr. Smith's direct  
20    testimony and associated exhibits and the direct testimony of Philip  
21    DiDomenico and Dan Koehler in DPU Exhibits 2.1A DIR through 2.3 DIR  
22    and DPU Workpapers 1.

23            CHAIR FENN: Okay. Those are all the exhibits that are in  
24    the docket; is that correct?

25            MR. GRECU: Correct.

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1 CHAIR FENN: Okay. All right. Without objection, we'll  
2 admit Mr. Smith's direct testimony and exhibits and Mr. DiDomenico  
3 and Mr. Koehler's testimony and exhibits that are filed in the  
4 docket.

5 [Testimony and exhibits of Smith, DiDomenico, and Koehler  
6 admitted.]

7 MR. GRECU: Thank you.

8 CHAIR FENN: Thank you.

9 BY MR. GRECU:

10 Q. Mr. Smith, have you reviewed the settlement stipulation  
11 filed in this docket?

12 A. I have.

13 Q. And is it the Division's position that the settlement  
14 stipulation resolving the issues in this docket is just and  
15 reasonable in result?

16 A. Yes.

17 Q. And based on your knowledge and experience, would approval  
18 of the settlement stipulation be just, reasonable, and in the public  
19 interest?

20 A. Yes, it would.

21 Q. And have you prepared a summary to share supporting  
22 approval of the settlement stipulation?

23 A. I have.

24 Q. Please proceed.

25 A. Thank you.

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1                   Good morning, Commissioners. Thank you for the opportunity  
2                   to address Rocky Mountain Power's application for cost recovery in  
3                   the Energy Balancing Account, or EBA, and the recommendations of the  
4                   Division and its consultant, Daymark Energy Advisors.

5                   The Division has reviewed the company's application to  
6                   recover approximately \$471.6 million in EBA costs from customers.  
7                   Based on the Division's and Daymark's audit, the Division and Daymark  
8                   filed direct testimony recommending a total reduction of over 9  
9                   million to the company's request on a Utah-allocated basis for hedge  
10                  transactions that violate the company's corporate policy and  
11                  principles. This recommendation comprised 10 trades, but 3 of which  
12                  were actual cost-related items that affected the adjustment.

13                  In November and December 2025, the Division engaged in  
14                  good-faith negotiations with Rocky Mountain Power, and based on those  
15                  negotiations, reached a settlement stipulation that was filed in this  
16                  docket. The settlement stipulation sets forth that the Division and  
17                  the company have agreed to an unspecified adjustment of 4.51 million  
18                  to the company's revised request for a total recovery of  
19                  \$467,105,308.

20                  In addition, the company agrees that before March 1, 2026,  
21                  it will report to the Commission on its governance and pre-approval  
22                  process improvements to ensure that sufficient documentation is  
23                  created and that employees obtain power physical transaction pre-  
24                  approvals as required.

25                  This concludes my summary.

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1                   MR. GRECU: The witness is now available for cross-  
2 examination and questions from the Commission.

3                   CHAIR FENN: Ms. Smith, any cross?

4                   MS. SMITH: No questions.

5                   CHAIR FENN: Okay. All right.

6                   Commissioner Clark?

7                   COMMISSIONER CLARK: I don't have any questions. Thank  
8 you, Chair.

9                   CHAIR FENN: All right. Let's go to Commissioner Harvey.

10                  BY COMMISSIONER HARVEY:

11                  Q. Good morning.

12                  A. Good morning.

13                  Q. I know that -- I'd like to ask some questions about the  
14 value that the DPU perceives in the review that the settlement, I  
15 guess, memorializes: this idea that PacifiCorp is reviewing its  
16 policies.

17                  What is the main benefit or benefits that the Division sees  
18 or hopes that that will accomplish?

19                  Q. You're talking about the settlement specifically?

20                  A. Yeah. Well, let me just make sure I'm asking it right.

21                  So in the settlement, it says that the company will engage  
22 and review that -- will talk about the pre-approval and various  
23 things.

24                  A. Yeah.

25                  Q. And so I'm -- from the Division's perspective, what value

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1 or what do we hope is accomplished by that?

2 A. The portion of what we're hoping to receive by March 1st is  
3 a plan presented by the company to address the things that we found  
4 within our scope of our audit.

5 And there's -- unfortunately, I don't have all the  
6 information that we have regarding it with me. But in Daymark's  
7 testimony, page 9 -- let me just go ahead and read that.

8 "There were some concerns about a period of aggressive  
9 natural gas hedging driven by a sudden change in modeled  
10 requirements. The acceptance of the natural gas swap  
11 transactions reviewed is conditional on the expectation  
12 that improved commercial objective documentation developed  
13 in Docket 24-35-10 will make the company's reasoning for  
14 future discretionary trades possible to review. For power  
15 physical hedging, we recommended a cost disallowance based  
16 on our review and supporting information provided."

17 So in that docket that was referenced in testimony, we have  
18 been working with the company to obtain documentation that gives us  
19 the ability to evaluate what the purpose of that transaction was,  
20 what was attempting to be accomplished in that, with some other  
21 details about the thoughts behind it and why that was a wise choice,  
22 why they made that choice.

23 Q. Okay. Would you say that what the division is hoping or  
24 expecting for is -- I'm going to give you two options here:

25 One is a change in the company's policies that essentially

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1       blesses the current behavior but gives more supporting documentation;

2                   Or are you hoping for a change in behavior to match  
3       policies?

4           A.    Well, I think it's both. I mean, we did find within our  
5       scope of our audit that there were policies in place, but the  
6       company, in their pre-approval process and other things, did not meet  
7       that policy. So it is a two-fold thing: both "What are you going to  
8       do to make sure that that process is followed?", and second of all,  
9       "How do you beef it up to a point where it can be reviewed in  
10      documentation and understanding so somebody" --

11               You know, it's a difficult thing to do prudence reviews  
12      just because of the amount of data and amount of stuff that we have  
13      to look at. So in order to facilitate that, we're asking the company  
14      to come to an understanding of what we face as a challenge and how we  
15      can be given what would make it easier for us to sort of go through  
16      that whole process.

17           Q.    Thanks. That's helpful.

18               Thinking about the specific issues that were found in this  
19      case, in this review, my understanding from reading the testimony is  
20      that Daymark had a sample -- as they put it: tens of thousands of  
21      transactions, they took a relatively small sample -- and then they  
22      found some issues.

23               Once that was identified, was there any effort to then look  
24      back at the larger population of transactions and say, "Are there  
25      other transactions that seem to potentially be in the same category?"

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1           A.    That's a good question. I know that we were constrained on  
2 time a little bit by the time we found it and got DRs back and  
3 everything.

4           So I don't know that we explored that as well as maybe we  
5 could have, and that might be something that we could do. And what  
6 we're doing is kind of like step by step, right?

7           So we're going to beef up even our review to ensure that we  
8 catch these things and see if we can't identify a trend or something  
9 that would allow us to see if there were more out there.

10          I do believe that they did some additional review, but  
11 unfortunately I can't really speak to the specifics of that.

12          Q.    Okay. I'd like you to look at your testimony. There's a  
13 table called EBA Deferral History on page 6.

14          A.    Yeah.

15          Q.    And your testimony notes that there's obviously a  
16 significant change toward the more recent years. But I'm curious in  
17 particularly looking at the difference between 2022 and then the most  
18 recent two years, '23 and '24.

19          Is that primarily due to hedging; is that the biggest  
20 factor or are there other -- I know the testimony discusses some  
21 things, but --

22          A.    That is a major factor in it. There were some challenges  
23 with coal, specifically in Utah with the mine fire that limited  
24 supply. And so they were kind of reacting to that somewhat. They  
25 did try to change the way they did things a little bit.

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1                   And the company may be able to address this better. But  
2 basically they increased the price of coal because of the supply  
3 issue to make sure that their models would keep a reserve amount that  
4 was required for them to keep to a certain degree.

5                   And so I do know that those kind of -- there were some  
6 other factors that played into that, but I would say that market  
7 purchases were a key driver. And if you look at the history of those  
8 transactions specifically, you'll note that there was, both in cost  
9 and I think volume, an increase in those which contributed  
10 significantly to this.

11                  Q.    Okay. And just to clarify for the record, when you say  
12 "They increased the price of coal", my assumption is you mean the  
13 company increased the input price of coal to their model.

14                  A.    Yes; that's our understanding, is they actually had to put  
15 a true cost, is I think how they referred to it, of balancing the  
16 reserve that they were supposed to keep in case there were other  
17 major factors that happened in the markets that disallowed them the  
18 ability to access those.

19                  Q.    I think that's all the questions I have. Thank you.

20                  A.    Thank you.

21                  BY CHAIR FENN:

22                  Q.    So Mr. Smith, just a follow-up on the questions  
23 Commissioner Harvey was asking you with respect to the significant  
24 increases referred to in the deferral history on page 6 of your  
25 testimony.

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1                   In the deferral period, it's my understanding that the  
2 company's market purchases experienced a significant increase in cost  
3 or price per megawatt hour. And what I saw in the testimony, you  
4 recall this, from \$17.17 per megawatt hour to \$99.12 per megawatt  
5 hour.

6                   Does that sound familiar to you?

7                   A. Yeah, yes.

8                   Q. Okay. And these are purchased power transactions; is that  
9 correct?

10                  A. Yes.

11                  Q. And the reason those were necessary is because what; is it  
12 because the company's own generation was fully dispatched?

13                  A. You know, the challenge is really trying to understand  
14 that, right, from our perspective as well.

15                  We think that the company has tried to manage its own  
16 resources, its own plant generation, to minimize those market  
17 purchases. I mean, that's the hope.

18                  So did they maximize those always: I don't know that I  
19 could speak to that. I do know that, you know, given the challenges  
20 that they faced --

21                  One of the things that's a little bit challenging is trying  
22 to distinguish between purchases made for hedging and purchases made  
23 because of lack of supply. When you make a market purchase for  
24 hedging, you've already committed to something and, you know, does  
25 that change the balance of how you -- I mean, you've got to sell it

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1 or you've got to use it. So does that impact the ability for them to  
2 make a choice to plant or to curtail it, right?

3 Q. Right.

4 A. So, you know, that is a challenge. And the company, of  
5 course, would speak better to that. And that's one of the things  
6 that we're going to try to -- as we go through this process, the  
7 company providing more information to us so we can look at that and  
8 kind of make a better -- I mean, answer this question better for you,  
9 for sure.

10 Q. So a follow-up on that:

11 What types of information are you asking the company to  
12 provide you to help you do a better analysis?

13 A. Well, we did go through, and the company has made  
14 efforts -- the division and its representative, Daymark, suggested  
15 market indexed purchases that would lessen that need to -- it would  
16 just fit sort of better into certain areas of their hedging and  
17 planning and stuff like that.

18 And at the time, the company said that those weren't  
19 available to them. But now we just attended a few months ago a  
20 technical conference where they are now proposing to utilize  
21 those -- I think they're currently doing that -- to better manage the  
22 risk cost associated with the commitment of making those market  
23 purchases for hedging and so forth.

24 Q. So more indexed price products versus fixed price products.

25 A. Correct.

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1 Q. That's the way the company is moving in that direction: to  
2 look at those on a more frequent basis?

3 A. Yes. It's going to become more key into their planning and  
4 acquisition of product for the company.

5 Q. Let me ask you the same question I asked of the company's  
6 witness, Mr. Painter.

7 So turning back to page 5 of the Daymark report, I  
8 referenced the phrase, "The Division and Daymark have been working  
9 collaboratively with the company to improve the quality and  
10 robustness of the company's contemporaneous documentation of trade  
11 purposes through the enhanced commercial objective reports and other  
12 records."

13 Can you elaborate on that as far as what the collaborative  
14 process is?

15 A. Well, what we've done so far is the company had sort of  
16 provided a format of what the reports would look like. We kind of  
17 evaluated that with our consultant, Daymark. They gave some  
18 feedback, which the company then implemented.

19 And they have since provided us with some sample -- you  
20 know, we just asked them --

21 And in reviewing those, we've become comfortable that  
22 Daymark is able to more effectively evaluate the purpose of why they  
23 made that decision at that time for that price.

24 Q. And how are they able to do that; how can they more  
25 effectively evaluate that?

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1           A. Just with a more robust amount of information given. So  
2 the trader and those involved are creating these reports that go on  
3 record in their company, and then we can request those to look at  
4 them. And in hindsight, we can kind of see if it made sense at the  
5 time.

6           Q. So I'm trying to understand -- again, back to the Daymark  
7 report with respect to the 10 power physical transactions that were  
8 studied and for which there was an assertion that they were a  
9 violation of the corporate governance and approvals policy.

10           Is it the position of the Division -- or of Daymark that  
11 the primary violation of the company's governance and approvals  
12 policy was that a trader exceeded its delegated authority under the  
13 policy?

14           A. Yes, that was the major violation. They went above what  
15 they were given.

16           Q. And the company's taking steps to remediate that, as I  
17 understand it.

18           A. That's what we understand as well.

19           Q. And do you know what those are?

20           A. We'll know March 1st, I guess.

21           Q. We'll figure that out on March 1st when we get the report?

22           A. Yeah. I wasn't involved with the confidential  
23 negotiations, so I don't know if something was shared there that  
24 would better answer your question. But I do know that there is a  
25 commitment involved there and we can hope that what we get is

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1 sufficient. If not, we'll be able to evaluate it and hopefully,  
2 through some negotiations, again, come to some kind of better  
3 understanding and hopefully they can beef up their process.

4 Q. I'm just trying to understand the process. I don't have  
5 the advantage of my fellow commissioners having a long history of  
6 going through EBA proceedings. So I'm trying to understand.

7 I'm just looking at this on a forward-going basis, and  
8 perhaps we'll learn more about that after this report is filed, as we  
9 have other proceedings.

10 A. Sure.

11 Q. But I want to refer to the Division's audit report now, if  
12 I can, and just have you -- I'm dealing with production tax credits  
13 issues, the PTCs.

14 A. Okay.

15 Q. And I'm referring on page 36 and 37 of the audit report.

16 Do you have that?

17 A. I don't.

18 Q. Can we get a copy for you?

19 A. I'm sorry, I didn't bring that up.

20 Q. Okay. Well, you probably didn't think you were going to  
21 need it, so I understand.

22 A. No, I apologize.

23 Q. But I'll just refer to it.

24 A. Yeah, if you don't mind. I have a good understanding.

25 Q. It states in the audit report, "This is the fourth

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1 consecutive EBA audit year in which the Division and Daymark have  
2 noted unrealized generation from PTC-eligible wind facilities."

3 A. Correct.

4 Q. And then it indicates that there's an estimated \$20 million  
5 in the 2024 deferral recovery and increased recovery due to  
6 unrealized PTCs.

7 A. Right.

8 Q. So then you talk about concerns and how to address those  
9 going forward -- or at least the audit report does, not you  
10 necessarily personally.

11 So I'll just ask about your recollection of -- do we need  
12 to go through these or do you recollect what the Division's  
13 recommendations were, what they think needs to be done to address the  
14 issue of underperformance of the wind assets?

15 A. I'm familiar with that issue because it's been ongoing for  
16 a while.

17 Q. Okay. Can you illuminate me as to what --

18 A. -- why those are?

19 Q. I understand why. Tell me what the plans are going forward  
20 to address that.

21 A. Do we -- I'm sorry, I don't have the benefit of --

22 MR. GRECU: Chair Fenn, --

23 CHAIR FENN: Yeah, the company should file -- the  
24 Commission should demand a broad analysis to understand how  
25 sensitive -- I'm talking about the audit report.

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1                   THE WITNESS: Right, right.

2                   MR. GRECU: Chair Finn, do you want me to -- I can provide  
3 the witness an electronic copy.

4                   CHAIR FENN: That would be perfect. I'm not going to  
5 prolong this, but --

6                   MS. SMITH: Do you mind repeating what page you're reading?

7                   CHAIR FENN: Yeah, I'm on page 36 and 37. I'm sorry.

8                   MS. SMITH: 36 and 37 within the document?

9                   CHAIR FENN: Within the document within the audit report.

10                  BY CHAIR FENN:

11                  Q. Okay. So maybe you can look at that. Instead of me  
12 reading them out, I'd prefer that you just tell me what your concerns  
13 are and what, I take it to be, your recommendations going forward.

14                  I'm just looking at this on a going forward basis.

15                  A. Yeah. Okay.

16                  MS. SMITH: Can I also just touch base and remind the  
17 witness that we are looking at confidential information and to  
18 navigate that accordingly.

19                  CHAIR FENN: Yeah, and that's why I made that comment  
20 earlier. I don't want to get into something that you would think  
21 would be confidential. I mean, it is on a confidential page, so.

22                  A. So these are mostly addressing the -- starting from the  
23 beginning, if we were to propose a new wind plant; is that --

24                  Q. Yeah.

25                  A. Okay. I didn't know if we had anything else additional,

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1       but that is the key thing. What we've noticed is -- and having dealt  
2       with this outside of my time with the division -- people, when they  
3       present a product, often oversell that a little bit. It's not  
4       uncommon, right? They're trying to bring the best foot forward and  
5       everything.

6               And unfortunately those don't always pan out, especially  
7       when there's a tax credit involved where you're trying to meet a  
8       certain dollar amount to make it penciled, to make it worth people's  
9       while.

10               So the division is recommending that if the company does  
11       present something new, that it should be evaluated on sort of the  
12       format that we suggest here. Rather than dealing with  
13       speculative -- a lot of these plants that we're looking at that had  
14       PTCs attached to them were re-powered assets, some of which were only  
15       less than 10 years old. And the analysis to redo that, and then yet  
16       they wanted to depreciate it over a 30-year period: I mean, there's  
17       just kind of -- I mean, a wind plant is a little bit complex,  
18       especially when you throw PTCs in it.

19               So whatever we can do to help with that pre-approval  
20       process, to really kind of vet it out. And that's a hard thing  
21       because we're relying on information not just from the company, but  
22       also the companies selling or providing that product or that wind  
23       generation equipment.

24               So a lot of it's what their track record is. I don't know  
25       if we could find that, whether or not -- I mean, this is just a good

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1 example because everybody was kind of coming in with fresh eyes and  
2 trying to understand what it was being presented. And we just took  
3 the best faith effort to evaluate that and to provide what we  
4 thought. I think we may have even questioned some of that in those  
5 dockets at the time. They seemed kind of a little hopeful in some of  
6 their numbers and so forth.

7 Q. Okay. I think the more I probe into this, the more I'm  
8 convinced that we will wait and see what we get in the March 1st  
9 report and then subsequent discussions of hedging.

10 A. Yeah. We can definitely make this more a part of the big  
11 picture.

12 Q. I don't think anybody's come prepared today to get into the  
13 nuances of the audit report or the Daymark report.

14 I do want to ask one question what your understanding of  
15 the Daymark analysis is. And it may be that it's constrained by time  
16 and the amount of the consulting contract.

17 But I'm curious how they arrived at the sample size of 46  
18 broadly represented samples of which 38 of those were related to  
19 hedging. How did they arrive at that sample size?

20 A. Yeah, it's unfortunate we don't have them to speak to this.

21 I do know that they do some amount of sampling. I don't  
22 know if they throw it into something and --

23 But also they do try to flag things that stand out to begin  
24 with. I know there's that.

25 We could definitely maybe make this a part of the March

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1 1st.

2 Q. Yeah, I'm just curious. And I gave you what my supposition  
3 was: it may be limited to based upon the time they had and the cost  
4 associated with it.

5 A. There's definitely that, yeah.

6 Q. But I'm just curious to say, I mean, do they view that or  
7 do you view that as a statistically significant sample size out of  
8 tens of thousands of trading transactions?

9 A. Yeah, I see what your concern is. And I unfortunately  
10 can't really speak to that directly. But I also have that question a  
11 little bit.

12 Q. Okay. All right.

13 A. I do know that the 42 is after sort of a pre-sorting pre-  
14 evaluation; it's not, you know, we just grab 42. I mean, there is  
15 something involved with how they got to that 42.

16 Q. Okay. And I think Commissioner Harvey asked this question,  
17 I just want to make sure I'm clear.

18 So the 10 transactions that you examined that you found had  
19 some questions about: was that 10 out of the 38 hedging transactions  
20 and out of the sample size of 38, or was there a broader universe  
21 that was looked at?

22 A. I think that I actually think that came from a broader  
23 review. I hate to speak for them, but my understanding --

24 Q. I don't have anybody to ask. Unfortunately, they're not  
25 here.

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1           A. I know, and I apologize. My understanding was that they  
2 did find sort of something and that created a, you know, "Hey, we  
3 should maybe look and see if there is more of this" kind of scenario.

4           So I'm sorry; I wish I could provide a better answer.

5           Q. It's okay. Well, I don't think I have any other questions.  
6 I appreciate you indulging me, Mr. Smith. Thank you very much.

7           A. Thank you for the questions. It's always good.

8           [CHAIR'S THOUGHTS]

9           CHAIR FENN: And I'll just observe:

10           I'm not trying to blow up the settlement here. I  
11 understand settlements are favored and I'm not asking those questions  
12 because I'm hostile to the settlement. I'm trying to gain greater  
13 understanding of the process by which the analysis is performed.

14           But that perhaps will be something I'll be illuminated on  
15 as we go forward. I think we'll have -- we'll see what we get in the  
16 report. And I think we may be having a technical conference on  
17 hedging that we've talked about. And so we'll talk about that down  
18 the road, I'm sure.

19           I think you can be excused.

20           THE WITNESS: Thank you. Thank you for your time.

21           CHAIR FENN: Okay. Thank you, Mr. Smith.

22           Okay. Let's see if anything in summation or anything else  
23 that parties have.

24           Ms. Smith, anything from you?

25           MS. SMITH: Nothing further.

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1 CHAIR FENN: Mr. Grecu?

2 MR. GRECU: Nothing further from the Division. Thank you.

3 CHAIR FENN: Okay. Commissioner Clark?

4 COMMISSIONER CLARK: Thank you, Chair Fenn. I don't have  
5 anything else.

6 CHAIR FENN: Commissioner Harvey?

7 COMMISSIONER HARVEY: I don't have anything either.

8 CHAIR FENN: Okay. Well, I already gave my thoughts.  
9 Based upon the fact we've got a stipulated settlement here, we'll  
10 move forward based on the statutory framework of stipulated  
11 settlements being favored in the law. And we'll issue an order here  
12 shortly on this.

13 So -- about that: under an hour -- we'll adjourn. Thank  
14 you very much.

15 [Adjourned at 9:52 a.m.]

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1 REPORTER'S CERTIFICATE

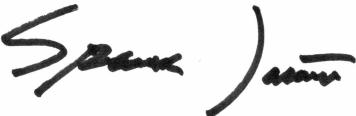
2 STATE OF UTAH )

3 COUNTY OF UTAH )

4 I, Spencer Von Jarrett, a Certified Shorthand Reporter,  
5 Registered Professional Reporter, hereby certify:

6 THAT the foregoing proceedings were taken before me at the  
7 time and place set forth in the caption hereof; that the witness was  
8 placed under oath to tell the truth, the whole truth, and nothing but  
9 the truth; that the proceedings were taken down by me in shorthand  
10 and thereafter my notes were transcribed through computer-aided  
11 transcription; and the foregoing transcript constitutes a full, true,  
12 and accurate record of such testimony adduced and oral proceedings  
13 had, and of the whole thereof.

14 I have subscribed my name on this 29th day of January,  
15 2026.

16  
17   
18

19 Spencer Von Jarrett

20 Registered Professional Reporter #993793

21  
22  
23  
24  
25

## [1 - addressing]

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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.

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