Rocky Mountain Power
Docket No. 17-035-40
Witness: Nikki L. Kobliha

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

Supplemental Direct and Rebuttal Testimony of Nikki L. Kobliha

January 2018

Q. Please state your name, business address, and present position with PacifiCorp.

A. My name is Nikki L. Kobliha and my business address is 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232. My present position is Vice President, Chief Financial Officer and Treasurer for PacifiCorp. I am testifying on behalf of Rocky Mountain Power ("Company"), a division of PacifiCorp.

QUALIFICATIONS

Q. Briefly describe your educational and professional background.

A. I received a Bachelor of Business Administration with a concentration in Accounting from the University of Portland in 1994. I became a certified public accountant in 1996. I joined the Company in 1997 and have taken on roles of increasing responsibility before being appointed Chief Financial Officer in 2015.

Q. What are your responsibilities as Vice President, Chief Financial Officer and Treasurer?

A. I am responsible for all aspects of the Company's finance, accounting, income tax, internal audit, Securities and Exchange Commission reporting, treasury, credit risk management, pension, and other investment management activities.

PURPOSE AND SUMMARY OF TESTIMONY

Q. What is the purpose of your supplemental direct and rebuttal testimony in this proceeding?

A. In my testimony, I support the Company's request that the Public Service Commission of Utah ("Commission") approve its significant energy resource decision for new wind resources ("Wind Projects") and voluntary energy resource decision for construction of the Aeolus-to-Bridger/Anticline line and network upgrades ("Transmission Projects") (collectively, the "Combined Projects"). In my supplemental direct testimony, I outline relevant provisions in the federal income tax reform enacted in December 2017. I confirm that there are no changes to current federal income tax law on production tax credits ("PTCs"), which provide significant value to the Combined Projects.

In my rebuttal testimony, I respond to income tax issues raised in the direct testimonies of Division of Public Utilities ("DPU") witnesses Dr. Joni Zenger and Mr. Daniel Peaco; Office of Consumer Services ("OCS") witnesses Mr. Philip Hayet and Ms. Donna Ramas; Utah Association of Energy Users ("UAE") and Utah Industrial Energy Consumers ("UIEC") witness Mr. Brad Mullins; and Interwest Energy Alliance ("Interwest") witness Mr. Gregory F. Jenner.

Q. Please summarize your testimony.

A. In December 2017, the U.S. Congress passed, and the President signed, H.R 1 ("Tax Act"), which included significant federal income tax reforms. The passage of the Tax Act resolved any risk that federal tax reform posed to the Combined Projects. The Tax Act sets a new corporate income tax rate, now incorporated in the Company's updated economic analysis presented by Company witness Mr. Rick T. Link. It also confirms the continued availability of PTCs for the Combined Projects, from which much of their economic benefit is derived. The enactment of the Tax Act therefore resolves the intervenors' concerns on this issue since the impacts are now known and incorporated in the economic analysis.

SUPPLEMENTAL DIRECT TESTIMONY

Q. When was the Tax Act enacted?

A. The Tax Act was signed into law by the President on December 22, 2017.

Q. When does the Tax Act become effective?

A. The Tax Act generally becomes effective for years beginning after December 31, 2017.

Q. Does the Tax Act reduce the Company's federal income tax rate?

A. Yes, the Tax Act reduces the Company's federal income tax rate from 35 percent to 21 percent.

Q. Is there a difference between the Company's federal statutory income tax rate and effective tax rate under the Tax Act?

A. No.

Q. Does the reduction in the corporate tax rate directly affect the value of PTCs?

A. No, the reduction in the corporate income tax rate does not directly impact the value of the PTCs. It does, however, impact the tax gross-up value of the PTCs to customers.

Q. Does the Tax Act change any aspect of federal income tax law related to PTCs?

A. No. There were no modifications to the federal income tax code or any Internal Revenue Service ("IRS") guidance relating to the PTCs.

Q. Please describe how a PTC is generated.

A. The Internal Revenue Code ("IRC") provides that a wind facility will generate a PTC equal to an inflation-adjusted 1.5 cents per kilowatt hour of electricity that is produced and sold to a third-party for a period of 10 years beginning on the date the facility is placed in service for income tax purposes.[1] The current inflation-adjusted PTC rate for electricity generated in 2017 is 2.4 cents per kilowatt hour.[2]

[1] IRC section 45(a).

[2] IRS Notice 2017-33.

Q. Under current income tax law, the PTC is being phased out. Please explain the phase-out process.

A. The Protecting Americans from Tax Hikes Act of 2015 ("PATH Act") was signed into law on December 18, 2015, and retroactively extended and phased out the PTC for wind facilities that began construction before January 1, 2020. For a wind facility that began construction before January 1, 2017, the credit generated by the wind facility is a full 100 percent of the PTC. For a wind facility that begins construction in 2017, the credit is reduced by 20 percent (*i.e.*, the facility receives 80 percent of the full PTC). For a wind facility that begins construction in 2018, the credit is reduced by 40 percent (*i.e.*, the facility receives 60 percent of the full PTC). For a wind facility that begins construction in 2019, the credit is reduced by 60 percent (*i.e.*, the facility receives 40 percent of the full PTC).[3] No PTC is available for a wind facility that begin construction after December 31, 2019.

Q. When does "construction" begin for a wind facility?

A. IRS Notice 2013-29 provides a taxpayer with two methods to establish that construction of a wind facility has begun. First, the taxpayer can begin physical work of a significant nature. Physical work can include both on-site and off-site work, either performed by the taxpayer or by another person subject to a binding contract.

Second, a taxpayer can pay or incur five percent or more of the eventual total cost of the qualified wind facility.[4] This is known as the five-percent safe harbor. The Company is using the five-percent safe-harbor method to qualify for 100 percent of the PTC for the benchmark resources selected in the final shortlist. In addition to the

[3] IRC section 42(b)(5).
[4] IRS Notice 2013-29 Section 5.01.

requirement that the wind facility begin construction before January 1, 2017, to qualify for 100 percent of the PTC, the wind facility must also satisfy the continuity-of-construction requirement

Q. Please explain the continuity-of-construction requirement.

A. The wind facility must be under continuous construction from the time physical construction begins until the wind facility is placed in service.[5] Whether a taxpayer satisfies the continuity-of-construction requirement is determined based on the relevant facts and circumstances surrounding the timing of the physical work to be performed on the wind facility.[6] The IRS has issued limited guidance on what facts and circumstances might be considered to meet this requirement. For example, the IRS has provided a list of non-exclusive "excusable" disruptions and delays deemed to be beyond the control of the taxpayer and therefore acceptable reasons that would support the taxpayer's contention that it has maintained a continuous program of construction. These acceptable delays include weather-caused delays, permit delays outside of the control of the taxpayer, and supply shortages, among others.[7]

The IRS has, however, also created a continuity-of-construction safe harbor (the "calendar safe harbor").[8] If a taxpayer places a facility in service by end of a calendar year that is not more than four calendar years after the calendar year during which construction of the wind facility began, the facility will satisfy the continuity-of-construction requirement by virtue of the calendar safe harbor.[9] Accordingly, if

[5] IRS Notice 2016-31 Section 4.
[6] IRS Notice 2016-31 Section 4.02(1).
[7] IRS Notice 2016-31 Section 4.06(2).
[8] IRS Notice 2016-31; IRS Notice 2017-4.
[9] IRS Notice 2016-31 Section 3.

construction of a wind facility began in December 2016, the facility will meet the continuity-of-construction requirement as long as the facility is placed in service by December 31, 2020.

The Company plans to have the Wind Projects placed in service by December 31, 2020, and therefore, the Company will qualify for 100 percent of the PTCs under the four-year calendar safe harbor.

Q. If the Transmission Projects are not completed by December 31, 2020, can the Wind Projects still qualify for the PTCs?

A. Yes. As discussed by Company witness Mr. Rick A. Vail in his supplemental direct and rebuttal testimony, the Wind Projects would still qualify if the Transmission Projects have facilitated synchronization to the transmission grid and commissioning of individual wind turbines in accordance with IRS guidance. In Private Letter Ruling ("PLR") 20033403, the IRS ruled that a wind turbine has been placed in service for the purposes of PTC qualification if: (1) the turbine has all necessary operating permits and licenses; (2) the turbine has been synchronized to the power grid; (3) the critical tests for the components of the wind turbine have been completed; (4) the wind turbine has been placed in the control of the taxpayer by the contractor; (5) the taxpayer has sold electricity that has been produced by the wind turbine; and (6) the wind turbine is putting power onto the grid on a regular basis. This IRS guidance applies even if the wind project is not producing transmission-level electricity due to a delay in a transmission project and has not been deemed to be under commercial operation by a regulatory commission. A PLR may not be relied on as precedent by other taxpayers; however, it is indicative of the IRS position on certain matters.

Q. Are there any other provisions of the Tax Act that affect the Combined Projects?

A. Yes. There are two other impacts associated with the reduction in the corporate income tax rate. A reduction to the corporate income tax rate reduces the tax gross-up, lowering the Company's overall rate of return on the Combined Projects. The lower tax rate also reduces the accumulated deferred income tax liability related to the use of Modified Accelerated Cost Recovery System (“MACRS”) accelerated depreciation for the five-year tax life of the Wind Projects, which will increase the net rate-base balance.

Bonus depreciation rules have also changed. Under prior income tax law, wind projects placed in service in 2019 by the Company would have received 30-percent bonus depreciation. Wind projects placed in service in 2020 would have received no bonus depreciation. The new tax reform legislation generally provides that regulated utilities such as the Company will not be allowed to use bonus depreciation on projects placed in service after September 27, 2017. The Wind Projects, however, remain subject to the five-year MACRS accelerated depreciation. The impacts of the reduction in the corporate income tax rate and the elimination of bonus deprecation for regulated utilities has been fully reflected in the updated economic analysis prepared by Mr. Link.

Q. Does the reduction in the Company’s federal income tax rate make the Combined Projects uneconomic?

A. No, as demonstrated in Mr. Link’s updated economic analysis of the Combined Projects.

Q. At this point, do you foresee any future tax reform legislation that will materially impact the economics of the Combined Projects?

A. No.

REBUTTAL TESTIMONY

Q. Mr. Jenner testifies that existing federal tax policies for renewable energy investments are favorable. (Jenner Direct, page 3, lines 9–14.) Do you agree?

A. Yes. Specifically, I agree with Mr. Jenner's observation that PTCs have reached their highest value ever. I also agree that, because of the scheduled phase-out of PTCs, the Company and other large utilities are accelerating their investments in wind projects to capture PTC benefits for their customers before PTCs are zeroed out for projects that begin construction in 2020.

Q. Please summarize the specific concerns raised by intervening parties related to income tax reform.

A. The parties testified that federal income tax reform creates uncertainty that increases customer risk associated with the Combined Projects. These concerns generally focus on the following five issues:

1. A corporate income tax rate reduction from the current 35 percent to around 20 percent.
2. A reduction in PTCs to remove statutory escalation in the rate, reducing PTCs from the escalated 2.4¢/kWh to 1.5¢/kWh.
3. Modifications to IRS guidance regarding compliance with the continuity-of- construction requirement, which could eliminate PTCs for the Wind Projects.
4. Changes to rules governing bonus depreciation that could cause the Combined Projects to no longer qualify for bonus tax depreciation.
5. A provision that would replace the Alternative Minimum Tax called the

Base Erosion Anti-Abuse Tax ("BEAT"), which could result in PTCs only being eligible to offset 90 percent of taxable income in any given year.

As I describe below, the enactment of the Tax Act resolved every one of these issues and these risks are no longer a concern.

Q. Parties contend that the uncertainty surrounding the federal corporate tax rate creates significant risk of decreased customer benefits from the Combined Projects. (Peaco Direct, lines 910–912; Zenger Direct, lines 272–280; Hayet Direct, lines 303–312; Ramas Direct, lines 333–347; Mullins Direct, page 38, line 22–page 39, line 7.) Is there still uncertainty related to the federal corporate tax rate?

A. No. As discussed above, the federal corporate tax rate has decreased to 21 percent beginning in 2018, and there is no reason to believe that another decrease will occur in the near future. As described by Mr. Link, the Combined Projects continue to provide substantial customer benefits under the Company's new 21 percent federal tax rate.

Q. Parties argued that there is a risk that PTCs could be reduced if tax reform eliminates the statutory escalation rate, consistent with tax reform legislation passed by the House of Representatives. (Peaco Direct, lines 889-892; Zenger Direct, lines 280-282; Hayet Direct, lines 327-332; Ramas Direct, lines 407-412; Mullins Direct, page 39, lines 11-15.) Did the final legislation affect the PTC escalation rate?

A. No.

Q. Parties argue that there is a risk that tax reform legislation could include modifications to the IRS guidance regarding compliance with the continuity-of-construction" requirement. (Peaco Direct, lines 889–902; Ramas Direct, lines 412–415.) Did the final legislation affect this requirement for PTC eligibility?

A. No.

Q. Ms. Ramas testifies that changes to the current bonus depreciation rules could result in the Combined Projects being disqualified for bonus depreciation. (Ramas Direct, lines 442–464.) Did the final legislation affect the Combined Projects' eligibility for bonus depreciation?

A. Yes. But, as I describe above, the change in the treatment of bonus depreciation has been accounted for in the Company's economic analysis and it does not materially impact the economic benefits of the Combined Projects.

Q. Mr. Mullins testifies that the BEAT provision included in the Senate version of the tax reform legislation could reduce the benefits of the Combined Projects. (Mullins Direct, page 40, lines 13–18.) Was the BEAT provision included in the final legislation enacted?

A. No.

Q. Does this conclude your supplemental direct and rebuttal testimony?

A. Yes.