

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-0947-TF

Tariff filing of Green Mountain Power Corporation requesting a 5.45% increase in its base rates effective with bills rendered January 1, 2019, to be fully offset by bill credits through September 30, 2019.

PREFILED DIRECT TESTIMONY OF

TERRY M. MYERS

ON BEHALF OF THE

VERMONT DEPARTMENT OF PUBLIC SERVICE

August 10, 2018

Summary: Mr. Myers presents the Department's position with respect to Green Mountain Power's proposed ratemaking treatment of the Tax Cuts and Jobs Act of 2017 ("TCJA 2017"), the proposed ratemaking treatment of the JV Solar/Battery Storage projects currently under development, and the proposed rate base treatment of the RECs held for resale. His testimony includes a discussion of the statutory and regulatory requirements of the TCJA 2017, as well as, potential concerns related to the proposed ratemaking treatment of the JV Solar/Battery Storage projects by Green Mountain Power.

Direct Testimony
Of
Terry M. Myers

1 **Q1. Please state your name and title.**

2 A1. My name is Terry M. Myers. I am a Senior Project Manager with GDS Associates, Inc.
3 (“GDS” or “GDS Associates”), a multi-disciplinary engineering and consulting firm that
4 serves primarily electric, gas and water utilities. My business address is 111 N. Orange
5 Avenue, Suite 750, Orlando, Florida 32801.

6

7 **Q2. Please describe your educational and professional background and experience.**

8 A2. I received a Bachelor of Science in Accounting degree from Indiana State University in
9 Terre Haute, Indiana, in December 1981. I passed the CPA exam in November 1991 and
10 I am a member in good standing of the Indiana CPA Society. I have been with GDS
11 since October 2008. My primary responsibilities involve providing rate and regulatory
12 consulting services related to electric utility industry matters, including income taxes,
13 accounting issues, pensions and PBOP issues, cost-of-service and related revenue
14 requirements, transmission revenue requirements, transmission and production formula
15 rates, incentive transmission rates, and reliability-must-run cost of service issues.

16

17 Prior to joining GDS Associates in October 2008, I spent twenty-three (23) years in the
18 utility industry working in multiple utility environments. I worked five years with a state
19 utility commission, over three years with a large investor-owned utility, and
20 approximately fifteen years combined for three utility consulting firms. During that time,

1 my positions and responsibilities changed from initially a utility rate accountant to a
2 senior utility consultant.

3
4 As a utility rate financial consultant with over thirty-two (32) years of experience, I have
5 had the primary responsibility for assignments pertaining to income taxes, wholesale
6 rates, retail rates, financial planning, transmission and production formula rates,
7 accounting issues, pension and post-retirement benefits other than pensions (“PBOP”)
8 issues, and reliability-must-run proceedings. My various assignments include utility
9 projects on behalf of municipal utilities, municipal power agencies, electric cooperatives,
10 non-profits, investor-owned utilities, and multiple consumer advocate offices and
11 regulatory commissions in twelve states and the District of Columbia. I have attached a
12 copy of my resume as Exhibit PSD-TMM-1.

13
14 **Q3. Have you ever testified before regulatory commissions?**

15 A3. Yes. I have testified before the Federal Energy Regulatory Commission (“FERC”),
16 before the Indiana Utility Regulatory Commission (formerly the Public Service
17 Commission of Indiana) in over 100 proceedings, and I have also testified before the
18 Arizona Corporation Commission and the Colorado Public Utilities Commission. I have
19 also filed testimony and exhibits before the Public Service Commission of West Virginia,
20 the Virginia State Corporation Commission, the Michigan Public Service Commission,
21 and the Florida Public Service Commission in proceedings that were either ultimately

1 settled before the trial phase or where my testimony and exhibits were accepted without
2 cross-examination.

3

4 **Q4. Have you testified as an expert witness in court proceedings?**

5 A4. Yes. I have testified before or filed affidavits in the United States District Court for the
6 Northern District of Mississippi, Delta Division and in Indiana State Court related to
7 utility rate matters.

8

9 **Q5. Have you ever testified before the Vermont Public Utility Commission (“PUC” or
10 “Commission”)?**

11 A5. No. I have not previously testified before the Commission.

12

13 **Q6. Please describe the purpose of your testimony.**

14 A6. The purpose of my testimony is to explain the Department’s position with respect to
15 Green Mountain Power Corporation’s (“GMP” or the “Company”) proposed ratemaking
16 treatment of the Tax Cuts Jobs Act of 2017 (“TCJA 2017”) impacts, the impact of GMP’s
17 proposed ratemaking treatment of the JV Solar/Battery Storage projects currently under
18 development, as well as, the proposed rate base treatment of the RECs held for resale. I
19 also discuss the applicable statutory and regulatory requirements of the TCJA and the
20 potential concerns related to the proposed ratemaking treatment of the JV Solar/Battery
21 Storage projects by GMP.

22

1 **Q7. Please provide an overview of the TCJA 2017 and GMP's proposed ratemaking**
2 **treatment.**

3 A7. The TCJA 2017 was signed into law by the President on December 22, 2017, which
4 provided a number of changes to the federal tax system. Those changes included but, are
5 not limited to: (1) the reduction of the federal income tax rate for corporations from a
6 maximum 35% tax rate to a flat 21% tax rate, effective January 1, 2018; (2) the
7 remeasurement of the income tax reserve to reflect the reduced 21% tax rate; and (3)
8 changes in energy tax credits (i.e., production tax credits and solar investment tax
9 credits). I will discuss each of the above three changes to the federal tax system along
10 with how GMP has proposed to address each in this instant rate case.

11

12 **Q8. Please discuss the impacts of the TCJA 2017 reduction of the federal income tax rate**
13 **from a maximum 35% tax rate to a flat 21% tax rate for corporations, effective**
14 **January 1, 2018.**

15 A8. The TCJA 2017 not only reduces the federal income tax ("FIT") rate from a maximum
16 35% tax rate to a flat 21% tax rate that will be included in the calculation of GMP's rates,
17 but it also necessitates the remeasurement of the deferred federal income tax reserves that
18 were recorded on the company's books prior to the reduction in the FIT rate. This
19 remeasurement is required by GMP since public utilities such as GMP that use
20 normalized accounting now hold customer-paid reserves for deferred taxes that
21 substantially exceed the companies' projected tax liabilities. Therefore, GMP is required
22 to remeasure its deferred federal income tax reserves to reflect the appropriate balance

1 that would have been required of the company if the 21% FIT rate had been in effect
2 since the beginning. The remeasurement of GMP's projected tax liabilities will result in
3 GMP recording excess income tax reserves as a non-current or deferred liability and
4 deficient income tax reserves as a non-current or deferred asset on its books. The excess
5 income tax reserves are the result of the customers providing funds in advance of the
6 company's actual recognition of the expenses for books/ratemaking purpose, such as the
7 use of "accelerated depreciation" for income tax purposes. The deficient income tax
8 reserves are the result of the company recognizing income or expenses for income tax
9 purpose prior to those items being reflected on the books/ratemaking purpose, such as the
10 recognition of "unbilled revenue" for income tax purposes.

11
12 **Q9. Has GMP reflected the 21% effective FIT rate, as a result, of the TCJA 2017 in their**
13 **filing?**

14 A9. Yes. GMP has reflected the 21% FIT rate, effective January 1, 2018 in its current filing.¹

15
16 **Q10. Has GMP performed the remeasurement of the income tax reserves as required by**
17 **the TCJA 2017?**

18 A10. Yes. GMP has performed the remeasurement of the income tax reserves as required by
19 the TCJA 2017. As reflected in Exhibit GMP-ER-16, GMP reflects a summary of its
20 calculation of the remeasurement of the income tax reserves and has established a
21 regulatory liability totaling \$177,728 (000s) for the Excess Deferred Income Taxes

¹ Prefiled Testimony of Edmund F. Ryan, Page 22 of 40, lines 7 through 11 and GMP-ER-1, Schedule 4.

1 (“EDIT”). GMP has also provided separate amounts for the EDIT that are classified or
2 categorized as being (1) Protected Plant; (2) Non Protected Plant; (3) Transco; and
3 (4) Regulated “Other.”
4

5 **Q11. Based on your review, has GMP properly performed the remeasurement of the**
6 **income tax reserves, as well as, classifying or categorizing them in the proper**
7 **categories in which to determine the proper amortization periods for each category?**

8 A11. Yes. GMP has performed the remeasurement of the income tax reserves addressing each
9 book/tax timing difference that is recorded on the company and then determining whether
10 the timing difference or EDIT was properly classified as (1) “Protected Plant;” (2) Non
11 Protected Plant; or (3) Regulated “Other.” GMP has also reflected the EDIT that should
12 be returned to customers from the Transco. GMP was requested to provide the detailed
13 information by each book/tax timing difference, which it provided in response
14 GMP.DPS1.Q136. GMP was also queried on a technical conference call, Monday, July
15 23, 2018, between DPS, myself and GMP to further discuss some individual items that
16 needed further clarification. GMP addressed each item that we needed further
17 clarification fully and resolved all concerns related to the classification of each timing
18 difference or EDIT, by describing its methodology and basis for each items
19 categorization. When asked if GMP used the required Internal Revenue Service (“IRS”)
20 “with and without” method² to determine the portion of the NOL carryforward

² See IRS Private Letter Rulings issued September 5, 2014, PLR 201436037 and PLR201436038 as well as, PLR 8818040 issued in 1988.

1 attributable to accelerated depreciation, GMP confirmed that it followed the IRS
2 guidelines.

3

4 **Q12. Please provide a detailed description of the three categories that GMP used for the**
5 **EDIT, (1) Protected Plant; (2) Non Protected Plant; and (3) Regulated “Other.”**

6 A12. I will describe each and whether they are subject to the IRS normalization rules. The first
7 category, Protected Plant is the only category of EDIT to which the IRS normalization
8 rules are applicable. The IRS normalization rules require the following:

9 Section 1.167(I)-1 ...the Income Tax Regulations provides that the
10 normalization requirements for public utility property pertain only
11 to the deferral of federal income tax liability resulting from the use
12 of an accelerated method of depreciation for computing the
13 allowance for depreciation under section 167 and the use of
14 straight-line depreciation for computing tax expense and
15 depreciation expense for purposes of establishing cost of services
16 and for reflecting operating results in regulated books of account.
17 These regulations do not pertain to other book-tax timing
18 differences with respect to state income taxes, F.I.C.A. taxes,
19 construction costs, and any other taxes and items.

20 To be clear, “Protected Plant” EDIT is related to all plant that has had “accelerated
21 depreciation” taken for income tax purposes and straight-line depreciation for books, cost
22 of service, and ratemaking purposes. “Protected Plant” EDIT must be returned or
23 refunded to the customers no faster than or prior to the time that the amounts in the
24 vintage plant accounts reverse. The IRS preferred method of returning or refunding the
25 “Protected Plant” EDIT is for the company to use the average rate assumption method
26 (“ARAM”.) To be clear, the ARAM method of returning or refunding the Protected
27 Plant EDIT to customers is based on the Average Remaining Life (“ARL”) of such plant

1 by vintage year. Since ARAM is by vintage year, the annual amount of the amortization
2 will vary as each vintage plant account reverses. But, if the company does not have or
3 has not maintained the vintage plant/property records that are necessary to compute
4 ARAM, the company can use an alternate method, such as the Reverse South Georgia
5 Method (“RSGM”). The Reverse South Georgia Method is also based on ARL, but it is
6 not based on the ARL by vintage year, but by taking the total depreciable plant and
7 dividing it by the average remaining life of the composite plant. This can be achieved
8 through using the results of a recent depreciation study. The RSGM will result in a
9 levelized amortization amount to be returned or refunded to the customers for the
10 Protected Plant EDIT.

11
12 The second category, Non Protected Plant EDIT, sometimes referred to as Unprotected
13 Plant EDIT, is all the remaining EDIT related to plant items which is related to book-tax
14 timing differences such as basis differences, state income taxes, F.I.C.A. taxes,
15 construction costs, and any other taxes and items. Non Protected Plant, which is not
16 constrained by the IRS normalization rules, may be returned or refunded to the customers
17 on any reasonable amortization period as determined by settlement or by regulator.

18
19 The third category, Regulated “Other” EDIT, sometimes referred to as Unprotected Non-
20 Plant Related EDIT, is the EDIT related to book-tax timing differences related to income
21 and expenses, but not limited to, accrued labor and benefits, injuries and damages
22 accruals, Workman’s Compensation, insurance accruals, deferred taxes, or the underlying

1 business is clearly public utility related, etc., that are not capitalized. Regulated Other
2 EDIT is also not constrained by the IRS normalization rules and it may be returned or
3 refunded to the customers on any reasonable amortization period as determined by
4 settlement or by regulator.

5
6 **Q13. Has GMP proposed amortization periods for each of the EDITs – Protected Plant,
7 Non Protected Plant, and Regulated “Other”?**

8 A13. Yes. GMP has proposed amortization periods ranging from one (1) year for both the Non
9 Protected Plant and Regulated “Other” categories of EDIT and thirty-three (33) years for
10 the Protected Plant EDIT³ using RSGM, since it has determined it does not have the
11 granularity of detail required to amortize the Protected Plant EDIT utilizing ARAM.⁴
12 GMP has also included an additional category of EDIT to be returned or refunded to
13 customers for the Transco. The Transco regulatory liability and EDIT is for GMP
14 investments in: Transco, GMP VT Solar and Green Lantern Solar. That Transco EDIT
15 will be returned or refunded to the customers utilizing ARAM, since the Transco does
16 have the detailed granularity to use ARAM.⁵

17
18

³ Prefiled Testimony of Edmund F. Ryan, Pages 12-13, and GMP-ER-16.

⁴ See GMP Response to DPS1.A137.d.

⁵ See GMP Response to DPS1.A138.c.

1 **Q14. Based on your review of the GMP filing and data responses in this proceeding do**
2 **the proposed amortizations, by GMP, for each category of EDIT appear to be**
3 **reasonable?**

4 A14. Yes. As stated above, GMP is proposing to return both the Non Protected Plant EDIT
5 and the Regulated “Other” EDIT in one year. This is a reasonable proposal and GMP has
6 provided support for this one-year amortization in the Prefiled Testimony of Edmund F.
7 Ryan, Page 13 of 40, lines 7 – 9. GMP’s proposal to use RSGM, due to it not having the
8 granularity of detail required to amortize the Protected Plant EDIT utilizing ARAM also
9 appears to be appropriate based on review of the TCJA 2017. Finally, GMP’s usage of
10 the ARAM amortization methodology to return or refund the Transco EDIT appears
11 appropriate.

12
13 **Q15. Based on your review of the GMP filing and data responses in this proceeding do**
14 **you have a recommendation regarding how GMP has proposed to implement the**
15 **TCJA 2017 reduction in the FIT rate to 21% and the proposed amortizations of the**
16 **EDIT to be returned or refunded to customers?**

17 A15. I would recommend that the Commission approve GMP’s proposed implementation and
18 treatment of the impacts of the TCJA 2017 in regards, to both the reduction in the FIT
19 rate to 21% and the proposed amortizations of each of the EDIT categories to be returned
20 or refunded to customers.

21

1 **Q16. Please provide an overview of the JV Solar/Battery Storage projects currently**
2 **under development and GMP's proposed ratemaking treatment.**

3 A16. GMP originally proposed inclusion of these JV Solar/Battery Storage Projects in its April
4 2017 filing for the 2018 rate case. GMP is proposing to accelerate the benefits of the
5 developer fees and day one ITC gains associated with these projects, and return them to
6 the customers immediately, because the result would be more beneficial to customers
7 than a different treatment. GMP has performed a Net Present Value ("NPV") of the
8 developer fee and day one gain benefits if those benefits would be returned to customers
9 immediately in year 1; over 15 years; and over 25 years.

10

11 **Q17. Do you have any concerns with GMP's proposal to reflect the proposed benefits to**
12 **customers immediately in year 1 for the JV Solar/Battery Storage projects?**

13 A17. Yes. I have multiple concerns that I will discuss. Those concerns include the following:
14 (1) intergenerational equities; (2) the Partnership Flip structure with respect to Investment
15 Tax Credits ("ITC"); and (3) IRS normalization rules regarding the ITCs.

16

17 **Q18. Please describe your Intergenerational Equities concern that you have related to**
18 **GMP's proposed JV Solar/Battery Storage projects.**

19 A18. GMP's proposed treatment of the developer fee and ITC gains to recognize them
20 immediately in year 1 provides that the current customers receive 100% of the benefits of
21 the ITC gains. The developer fee and ITC gains would therefore only benefit the current
22 customers on the GMP system in year 1. None of the developer fee and ITC gains would

1 flow to future customers over the remaining life of the JV Solar/Battery projects year 2
2 and thereafter. The developer fee and ITC gains should be amortized over the life of the
3 JV Solar/Battery projects so that not only the current customers, but all future customers
4 that enter the GMP system receive the appropriate benefit of those developer fee and ITC
5 gains related to the JV Solar/Battery projects that will be in the rate base component in
6 those future rate periods. Let's consider an "extreme" example related to the
7 intergenerational equities. Extreme Example Assumptions: (1) all current customers exit
8 the GMP system after year 1, and (2) a total new set of customers enter the GMP system
9 and would replace them at the beginning of year 2. Under this extreme example, the
10 current customers that exited the GMP system after year 1, would have received 100% of
11 the developer fee and ITC gains benefits during year 1, and all the new customers that
12 entered the GMP system in year 2 and thereafter would not receive any benefit of the
13 developer fee and ITC gains. Therefore, the future customer's rates would be higher
14 since they would not receive any of the benefits of the developer fee and ITC gains in
15 those future rates.

16
17 **Q19. Please describe your concerns with the Partnership Flip structure with respect to**
18 **ITCs.**

19 A19. One major area of concern is that the Partnership Flip structure and allocations must be
20 respectful of the special allocation rules utilized to specifically allocate the incentives to a
21 Tax Investor. The Tax Investor must have the following: (1) possess sufficient taxable
22 income to monetize all the tax benefits, i.e. both the tax credits and the Modified

1 Accelerated Cost Recovery System (“MACRS”) tax depreciation; (2) be subject to
2 Passive Activity Rules; (3) funds an appropriate percentage of the total project costs; (4)
3 meet a target Internal Rate of Return (“IRR”) earned through allocation of 99% of the tax
4 credits and taxable losses/income and distribution of cash; and finally (5) typically the
5 Tax Investor exits the project after the flip when the Developer/Sponsor exercises its fair
6 market value (“FMV”) or liquidation purchase option. The Developer/Sponsor must
7 have the following: (1) the Return on Investment (“ROI”) earned through cash flows; (2)
8 minimum 1% allocation of tax benefits; (3) long-term ownership; and (4) FMV or
9 liquidation purchase option on Tax Investor’s residual interest. The ownership structure
10 and allocations must be respected for federal income tax purposes. The Partnership flip
11 would also be subject to recapture of the ITC during the first 5 years, with vesting of 20%
12 per year and there is no safe harbor related to ITCs.

13
14 **Q20. Are there any concerns related to the Tax Investor being a Valid Partner?**

15 A20. Yes. There are potential concerns related to the Tax Investor being a Valid Partner.

16 Those concerns include the following: (1) there must be assurance that the partnership
17 owns the assets and the individual partners own their specific interests; (2) the Tax
18 Investor has enough upside and downside to be the tax-law owner; (3) the burdens and
19 benefits of ownership are key, including: (a) there must be no guarantee of the ITC credit
20 result; (b) the documents that establish the Partnership Flip should not state the ITC credit
21 is being “sold”; (c) the pre-tax cash-on-cash return of 2-3% is appropriate; and (d) the
22 projections for the Partnership Flip are to be realistic and the accounting firm which

1 prepares the projections must maintain independence to ensure the projections are
2 realistic. Furthermore, the Tax Investor, as a valid partner, would be subject to the court
3 applied substance over form doctrine. The economic substance of the Partnership Flip
4 transaction must be “real” and not just “tax motivated.” This economic substance
5 doctrine is codified in Code section 7701(o).

6
7 **Q21. Are there any concerns related to the allocation of partnership items?**

8 A21. Yes. The ITC Credits are to be allocated consistent with the general profits in the year of
9 the ITC credit. The allocation of MACRS tax depreciation must have substantial
10 economic effect. The IRS views electricity as inventory, so special allocations are
11 limited, which is another concern. Tax Equity Investments (“TEI’s”) generally require
12 all allocations for five years remain constant with the credit allocation [generally 99%] to
13 avoid the ITC recapture issues. There is a limitation on allocation of tax benefits to the
14 Tax Investor partner, including that losses are limited to positive capital accounts unless
15 the partner has a “deficit restoration obligation” or “minimum gain.”

16
17 **Q22. Please describe your concerns with GMP’s proposed treatment of the ITC gains for
18 the JV Solar/Battery Storage projects and the IRS normalization rules.**

19 A22. GMP’s proposed treatment of the ITC gains to recognize them immediately in year 1 may
20 run afoul of the IRS normalization rules on ratable flow through of investment tax credits
21 (“ITC”). In a private letter ruling (“PLR”), the IRS provided the following guidance on
22 this issue:

1 ...former § 46(f)(2)(A) provides that no investment tax credit is
2 available if the taxpayer's cost of service for ratemaking purposes
3 or in its regulated books of account is reduced by more than a
4 ratable portion of that credit determined under former § 46(a) and
5 allowable by § 38....

6
7 Former § 46(f)(6) provides that for purposes of determining ratable
8 portions under former § 46(f)(2)(A), the period of time used in
9 computing depreciation expense for purposes of reflecting
10 operating results in the taxpayer's regulated books of account shall
11 be used.

12
13 Under § 1.46-6(g)(2) of the Income Tax Regulations, "ratable" for
14 purposes of former § 46(f)(2) is determined by considering the
15 period of time actually used in computing the taxpayer's regulated
16 depreciation expense for the property for which a credit is
17 allowed....

18
19 The method prescribed by § 1.46-6(g)(2) for determining whether
20 the taxpayer's cost of service for ratemaking is reduced by more
21 than a ratable portion of the investment tax credit depends upon
22 correlating the credit with the regulatory depreciable useful life
23 actually used for the property that generated the credit. That the
24 correlation must remain constant and current is illustrated by the
25 requirement that the ratable portion must be adjusted to reflect
26 correspondingly any revision to the composite annual percentage
27 rate applied for purposes of computing regulated depreciation
28 expense.⁶

29
30 GMP's proposed treatment of the ITC gains may violate the IRS' normalization rules.

31
32
33

⁶ IRS Private Letter Ruling, PLR-135088-05 May 09, 2006.

1

2 **Q23. Based on your review of the GMP filing and data responses in this proceeding, do**
3 **you have a recommendation regarding GMP's proposal to reflect 100% of the**
4 **developer fee and ITC gains in year 1 of the rates for the JV Solar/Battery Storage**
5 **projects?**

6 A23. I would recommend that the Commission not approve GMP's proposed inclusion of
7 100% of the developer fee and ITC gains in year 1 of rates, unless or until GMP is able to
8 provide definitive support that its proposal does not lead to intergenerational inequities
9 and that its proposed treatment of the ITC does not result in a violation of the IRS
10 normalization rules.

11

12 **Q24. Mr. Myers, do you have any concerns related to GMP's proposed rate base**
13 **treatment of the RECs which are held for resale?**

14 A24. Yes. Based on my review of GMP's proposal to provide rate base treatment of the RECs
15 which are held for resale, it appears that GMP would receive a return on its investment in
16 those RECs, but the customers would not receive any benefit from the REC resales. It
17 would be inequitable for the company to receive a return on investment for the inventory
18 of RECs that are held for resale, without the customers receiving some benefit from any
19 gains that GMP receives from the sales.

20

21 **Q25. Does this conclude your testimony?**

22 A25. Yes.