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Division of Public Utilities

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Memorandum

TO: Public Service Commission

FROM: Division of Public Utilities
Constance White, Director,
Artie Powell, Energy Section Manager
Charles Peterson, Technical Consultant
Carolyn Roll, Utility Analyst

DATE: January 24, 2007

RE: PacifiCorp filing related to Docket No. 06-035-21 showing PacifiCorp's compliance with the repeal of the Utah Gross Receipts Tax on Electrical Corporations, as implemented by a tariff filing pursuant to Utah Code Annotated 54-7-12.9 as amended by Senate Bill 34 in 2006.

I. ISSUE

In an Action Request dated December 11, 2006 the Commission requested that the Division review and comment on PacifiCorp's filing regarding the compliance with the repeal of the Utah Gross Receipts Tax on Electrical Corporations, implemented with a tariff filing with the Commission pursuant to Utah Code Annotated 54-7-12.9 as amended by Senate Bill 34 in 2006. The Commission gave the Division until February 9, 2007 to comment.

II. RECOMMENDATION

The Division has reviewed the tariffs filed by PacifiCorp pursuant to 54-7-12.9, and believes that they comply with the repeal of the Utah Gross Receipts Tax for electrical Corporations. The Division recommends that the Commission acknowledge the filing.

III. DISCUSSION

In a letter filed with the Commission dated December 8, 2006 (“Letter”), PacifiCorp (the “Company”) sought to comply with the requirements Utah Code Annotated 54-7-12.9 specifically with UCA 54-7-12.9 (2)(b). The Company asserts that it has complied. The issue revolves around the 2006 repeal of the Utah Gross Receipts Tax on Electrical Corporations, Utah Code Annotated 59-8a-101 through 106.

As the December 8, 2006 filing by PacifiCorp points out, UCA 54-7-12.9 (2) requires that the Company file new tariffs reflecting the decrease in the gross receipts tax and that the decrease be spread among all customer classes “on the same basis that the gross receipts tax was allocated to each class of...customers under the rates effective on the day which the rate determined by the commission (sic) take effect under the electric corporation’s 2006 general rate case filed on or before September 1, 2006.”¹

In its discussion in the Letter, the Company asserts that “[t]he reduction in Taxes Other than Income Taxes flowed through to the state of Utah revenue requirement and to each class of customers using the same jurisdictional and class allocation basis as the Gross Receipts Tax was allocated in prior rate cases.”² The Division’s analysis of this statement follows.

In an Application dated March 7, 2006, PacifiCorp filed for a rate increase in Utah amounting to \$197.2 million (Docket No. 06-035-21). Subsequently, pursuant to Utah Commitment 23 following the closing of the Acquisition of PacifiCorp by MidAmerican Energy Holdings Company (MEHC)³, MEHC filed Supplemental Direct Testimony resulting in a reduction in the requested increased to \$194.1 million. The relevance to this discussion is that according to PacifiCorp’s filed testimony through J. Ted Weston, PacifiCorp’s requested revenue requirement excluded an amount for the Utah Gross Receipts Tax in expectation that the tax would be repealed.⁴ The amount of the tax for the Company’s base period ending September 30, 2005 was about \$3.75 million. This amount was set at zero in its subsequent forecast periods. The tax was repealed and consequently the Utah Gross Receipts Tax was not discussed in the negotiations and the Parties’ internal discussions that ultimately led to the settlement of the revenue requirement and rate design portions of the rate case. The Division believes that the benefit of the repeal of the Gross Receipts Tax flowed through to customers through the elimination of the tax in PacifiCorp’s originally requested revenue requirement which formed the basis for the settlement negotiations. The first part of the Company’s assertion in the Letter that “the reduction flowed through to the...revenue requirement” appears to be verified.

The second part of the assertion regarding the flow through to “each class of customers using the same jurisdictional and class allocation basis as the Gross Receipts Tax was allocated in prior rate cases” may be a misstatement or result from a misreading of the statute. UCA 59-7-12.9(2)(a)(ii) refers to “the rates effective on the day on which the rate determined by the commission (sic) take effect under the electric corporation’s 2006 general rate case...” This

¹ Utah Code Annotated 54-7-12.9 (2)(a)(ii).

² “Letter” p. 2.

³ Refer to Docket No. 05-035-54.

⁴ Docket 06-035-21, Direct Testimony of J. Ted Weston, p. 28 and UP&L Exhibit JTW-1 tab 7.3.

appears to refer to the new rates that take effect and does not reference allocations in prior rate cases.

As part of the general rate case under Docket No. 06-035-21, cost of service studies were prepared by the Company which were analyzed by the Division and the other Parties to that Docket. The class rate designs were settled based upon those studies with the exception of a customer service charge for Schedule 1 customers that was decided by the Commission. With the Commission's approval of the class rate design, the rates that went into effect from "the rate case filed on or before September 1, 2006," received the benefit of the repeal of the Gross Receipts Tax in an amount equal to the amount of the Gross Receipts Tax that would have been allocated to the class rates had the Tax still been in effect.

The Division thus concludes that the Company's statement is accurate that its tariff rates that went into effect on December 11, 2006 "comply with the requirements of §54-7-12.9"⁵

cc Dave Taylor, Rocky Mountain Power
Cheryl Murray, Committee of Consumer Services
Rea Petersen, Division of Public Utilities

⁵ "Letter" p. 2.