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State of Utah
DEPARTMENT OF COMMERCE
Office of Consumer Services

MICHELE BECK
Director

To: Utah Public Service Commission

From: Office of Consumer Services
Michele Beck, Director
Dan Gimble, Manager

Date: October 23, 2014

Docket: In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism; Docket No. 09-035-15

Re: Office Reply Comments on Division's Preliminary Evaluation of Rocky Mountain Power's EBA Pilot Program

Background

On May 22, 2014, the Division filed its preliminary evaluation of the EBA Pilot Program. On September 18, 2014, the Company and the Office filed comments on the Division's EBA Evaluation. At this time, the Office responds to certain issues raised in the EBA comments submitted by the Company.

Comments

1. *Removal of the 70-30 Sharing Mechanism*

The Company states that EBA sharing is punitive and provides no incentive to management to plan, operate and maintain its system in a least cost manner. In particular, the Company claims that the new Energy Imbalance Market (EIM) will ensure that resources are optimally dispatched and there is sufficient opportunity for parties to undertake prudence reviews in GRC and EBA proceedings.

Office Response - As indicated in our earlier comments, the Office has the opposite view of the sharing mechanism and continues to recommend that the 70-30 sharing be retained at least through the pilot period for the following reasons:

- The introduction of the EBA has resulted in a shift in NPC forecast risk from the Company to ratepayers. In each of the three EBA cases to date, the Company has

filed to recover positive EBA accrual amounts that occurred from under-forecasted NPC in base rates. The under-forecast of NPC in the Company's 2014 EBA filing is approximately \$38 million (prior to 70-30 sharing), which exceeds the \$35 million increase in general rates that went into effect on September 1, 2014.

- There is currently limited data available to evaluate the Company's performance in a number of key areas pre- and post-EBA. These areas include resource planning and acquisition, market reliance, hedging program, and plant dispatch and maintenance.
- The Division's testimony in the current EBA docket indicates ongoing difficulties in obtaining information from the Company so that it can fulfill its EBA audit responsibilities. While the settlement in the 2014 EBA case sets forth mutual commitments on the part of the Company and the Division to improve the EBA audit process, it will take some time to see if these targeted improvements are realized.
- In its 2011 order approving the EBA pilot, the Commission stated that the 70-30 sharing mechanism is the "best method" to align shareholder and ratepayer interests and to ensure the public interest is maintained.¹ Consequently, the Commission has already recognized that prudence reviews alone are inadequate for addressing issues involving sub-par performance by management in planning and operating its system.

The Office stands by its earlier recommendation that no changes to the 70-30 sharing mechanism be contemplated at this time. In addition to annual reviews of EBA deferrals for accuracy and prudence, the 70-30 sharing remains an important and necessary feature to protect customer interests. At the conclusion of the EBA pilot, the EBA sharing mechanism and associated percentages can be examined for possible changes.

2. Unbundling NPC from Base Rates

The Company states that unbundling NPC from base rates would eliminate the mismatches that occur between test periods in base rates and the EBA rate effective period. According to the Company, this unbundling would result in a more accurate tracking of actual NPC, reduce the volatility in EBA results and allow for more frequent updates to base NPC, as they would be a standalone rate component.

Office Response - The Office agrees with the Company that this is an area where the EBA could possibly be improved; especially attempting to better align test periods used to set base rates and the EBA rate effective period. The Office suspects that part of the reason for EBA deferrals becoming increasingly greater in magnitude is this mismatch alluded to by the Company. However, there are numerous other factors contributing to EBA volatility, including load variations, energy from intermittent resources, changes in fuel prices, the number and duration of unplanned outages and so forth.

¹ Utah Public Service Commission, EBA Order, (Corrected) March 3, 2011, pgs. 69-70.

3. *Implement a Process to Expand the EBA*

The Company proposes establishing a process for expanding the EBA to include additional “unpredictable and uncontrollable” cost elements. However, in its comments the Company does not describe what this process would entail and provides minimal information regarding additional NPC accounts that include uncontrollable cost elements.²

Office Response - The Office has the following concerns in this area:

- While the Office is not opposed to discussing a process to consider either expanding or contracting the EBA, care must be taken that a “kitchen sink” attitude is avoided. During the 1980s, Utah Power’s EBA was plagued with this kind of over-reach and was one of the reasons the mechanism was eliminated by the Commission.
- Any proposal to expand or contract accounts included in the EBA should be addressed in a GRC; with any recommended changes supported by testimony and evidence. Further, any proposal should be described with reference to specific NPC accounts included in base rates.
- The Company earlier raised variable costs of the EIM as one possible new cost category to be included in the EBA. As noted in the Office’s previous comments, EIM costs are addressed in the stipulation in the last GRC, which requires the Company to demonstrate that EIM provides a net benefit to customers before costs are allowed to be recovered in base rates or through the EBA. Including EIM variable costs in the EBA prior to a Commission decision allowing such costs in base rates would violate the fundamental premise of the EBA; namely, that the EBA is a reconciliation mechanism designed to true-up forecasts of NPC in base rates to actuals.

4. *Use a Single EBA Calculation/Allocation Method*

EBA deferrals are presently calculated using four distinct methods – the Scalar Method, the Commission Order Method, the A2 Method and the A3 Method. The Company recommends eliminating the A2 and A3 methods on the basis that they will either be irrelevant going forward or provide little useful information. They also support the Division’s recommendation that no changes to the Scalar Method are required.

Office Response - The Office recommends that a technical conference be scheduled by the Commission no later than January 30, 2015 to address whether:

- The A2 and A3 EBA calculation methods should be removed at this time; and
- Any modifications need to be made to the Scalar Method to ensure an accurate calculation of Utah’s EBA deferral.

The Office looks forward to participating in any technical conference scheduled by the Commission on these issues.

5. *Re-litigation of GRC NPC Issues*

² See Company Comments, Section B, pages 7-8.

The Company contends that NPC issues resolved in GRCs should not be re-litigated in subsequent EBA cases.

Office Response - The Company's statement on this matter fails to distinguish between NPC adjustments that are litigated and resolved by the Commission through specific findings in a GRC order versus NPC adjustments that are settled in a stipulation. The standard language in a stipulation normally reserves the ability of a signing party to raise the same or similar issues in future rate proceedings that were settled in past cases. For example, the language in Paragraph 21 from the recent 2014 EBA stipulation states:

"The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide and inferences regarding, and the Parties are free to take any position with respect to any issues not specifically called-out and settled herein."

The Office's position is that the re-litigation matter is not a pressing concern. If the Company believes that an adjustment proposed in an EBA proceeding constitutes re-litigation of a GRC issue, it is free to make a legal argument to that effect.

6. Consolidation of Filing Requirements

The Company recommends that all EBA filing requirements be reviewed for consolidation and any duplicative requirements be eliminated.

Office Response – The Office supports the Company's recommendation and notes the 2014 EBA Stipulation includes additional commitments that may need to be reviewed in the context of existing filing requirements. We recommend that this issue be addressed in a technical conference scheduled by the Commission (see Recommendation Section below).

Recommendation

The Office continues to recommend that no major changes be made to the EBA mechanism through the pilot period. In particular, the 70-30 EBA sharing should remain intact to protect ratepayer interests and should be addressed, along with other significant EBA issues, at the conclusion of the EBA pilot period.

The Office also recommends that the Commission hold a technical conference by January 30, 2015 for the limited purposes of addressing three areas:

- Whether the A2 and A3 EBA calculation methods can be dropped and the accuracy of the calculation of the EBA deferral using the Scalar Method;
- The consolidation of EBA filing requirements; and
- A process for expanding or contracting the accounts included in the EBA and what evidence would be required from a party making such a proposal.

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