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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER TO INCREASE RATES BY $29.3 MILLION OR 1.7 PERCENT THROUGH THE ENERGY BALANCING ACCOUNT	Docket No. 12-035-67 **ROCKY MOUNTAIN POWER'S OPENING BRIEF REGARDING APPLICATION OF INTERIM RATE PROCESS TO EBA DEFERRAL AND APPLICABLE LEGAL STANDARD**

Rocky Mountain Power, a division of PacifiCorp ("Company" or "Rocky Mountain Power"), hereby submits this opening brief to the Public Service Commission of Utah ("Commission"), pursuant to the Commission's bench order issued at the hearing on May 14, 2012, directing the parties to brief two issues with respect the energy balancing account ("EBA"). This brief demonstrates that: (1) the interim rate process applies to the deferral amount in the EBA; and (2) the Company has met its burden of proof to obtain relief in this case, by presenting prima facie evidence that the interim rates the Company seeks are just, reasonable and sufficient. On this basis, the Company asks the Commission to approve the Company's request for interim approval of $8.9 million in EBA costs.

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I. BACKGROUND

The Commission has previously found that the EBA results in just and reasonable rates and is in the public interest. *See In the Matter of the Application of Rocky Mountain Power for Approval of its Proposed Energy Cost Adjustment Mechanism*, Docket No. 09-035-15, Corrected Report and Order, March 3, 2011 at 66-68, 70 ("EBA Order"). The Commission concluded that the EBA, "properly designed, can be targeted to mitigate potential financial harm to the Company and avoid unfair rates to customers resulting from setting rates through sole reliance on net power cost forecasts which do not adequately capture the underlying variability of the inputs to net power costs." *Id.* at 66. The Commission further found that to serve the public interest and "ensure just and reasonable rates, most importantly this new mechanism must fairly allocate risk between customers and shareholders, maintain incentives to operate efficiently, both in the long-run and short-run, and satisfy the requirements of the Energy Balancing Account statute." *Id. at* 66- 67.

On the need for a balancing account, the Commission noted, in part:

> We find the Company's current portfolio of resources, its current need for capacity expansion, and its increasing reliance on markets to manage hourly system changes are substantial departures from the conditions existing in the early 1990s ... As in the 1980s, the Company is once again in a capacity expansion period and is exposed to under-earning due to regulatory lag. Further, the company demonstrates its resource portfolio now includes, and is expected to continue to add, substantial amounts of natural gas and wind resources. The Company shows, and most parties generally concur, the prices of natural gas and wholesale market transactions, and the output of wind resources are volatile.
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> …
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> The Company provides persuasive evidence demonstrating the effects of the increasing magnitude of the volatility on its actual, systemwide net power cost. The Company demonstrates its ability to accurately forecast systemwide net power cost in future test periods, even one year ahead, is questionable. With the existing ratemaking treatment of net power cost, i.e., forecasts within future test periods, the Company has no incentive to understate its net power cost forecasts,

> yet the record shows several forecasts over the past five years have been understated. More importantly, whether over-or under-forecast, the magnitude of the variation between forecast and actual system net power cost is increasing.

EBA Order at 65.

Importantly, the Commission also approved the process for implementation of the EBA: "We concur with the recommendation of the Company and Division to establish an interim rate process. *We adopt a review process with hearing to set 'interim rates.'* We direct the Company to file annually, on March 15, to collect or refund the calendar-year deferred balance. Following the Division's audit and a prudence review, we will set final rates." *Id.* 77 (emphasis added).

Against this backdrop, the Company requests that the Commission confirm the applicability of the interim rate process to the EBA deferral amount and find that the Company has met its burden of proof by demonstrating that the interim rates the Company seeks are just, reasonable and sufficient.

II. ARGUMENT

A. The Interim Rate Process Applies to Rocky Mountain Power's EBA.

The Commission created the EBA through the EBA Order, in accordance with Utah Code Ann. § 54-7-13.5 (the "EBA statute"). The EBA Order sets out a process that relies upon interim rates. Under the EBA's interim rate process, after the Company files its application including supporting testimony, the Division of Public Utilities ("Division") performs a preliminary review of the Company's application and files its report and recommendations. Parties then have the opportunity to file comments. Assuming the Company has met its burden of proof, interim rates are set after a hearing. It is now too late for parties to petition the Commission for reconsideration of this process, and it is inappropriate for parties to ask the Commission to change a process that is now well underway.

Like the EBA, the Questar 191 balancing account ("191 Balancing Account") was created by Commission order. *See Questar Gas Company v. Utah Public Service Commission,* 34 P.3d 218 (Utah 2001) (citing Utah Pub. Serv. Comm'n, Rep. and Order, No. 78-057-13, at 4 (April 3, 1979)).

In early 2000, Questar sought review by the Utah Supreme Court of a Commission order denying Questar's application to recover carbon dioxide (CO_2) removal costs under its 191 Balancing Account. *Id.* at ¶ 5. The Commission denied the application concluding that Questar had not produced sufficient evidence to show the contract was prudent, and that the costs could not be recovered through account 191 because they were not eligible for treatment under the "pass-through" statute, section 54-7-12(3)(d).[1] *Id.*

Reversing the Commission, the Court found that: (1) the Commission had not tied the creation of the 191 Balancing Account to the "pass through" statute; (2) the 191 Balancing Account was a separate rate-changing mechanism through which the Commission could set rates that are just, reasonable and sufficient; and (3) the Commission was required to consider the application according to the balancing account procedures. *Id*., at 218. Notably, the Commission expressly held that the Commission had authority to approve interim rates for the 191 Balancing Account, stating, in part:

> We presume, as we did in *Utah Department of Business Regulation v. Public Service Commission,* 720 P.2d 420 (Utah 1986), a case involving a similar type of account used by Utah Power and Light, that the Commission implemented this rate-changing mechanism under its "ample general power to fix rates and establish accounting procedures." We recognize that this power is not unlimited, and as we stated in the *EBA* case, the Commission has authority to set rates only

[1] The "pass-through" statute is now Utah Code Ann. § 54-7-12(4)(a)(i). This pass through statute allows a utility to seek interim rates within 90 days after the day on which it files a complete filing for a general rate increase or a general rate decrease. Under this statute, the standard for relief is that "[t]he evidence presented in the hearing held pursuant to this Subsection (4) need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(d), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified."

> in general rate proceedings … [and has] limited authority to permit interim rate changes which are necessary because of unexpected increases in certain specific types of costs." 720 P.2d 420 at 423. We have held that this limited authority can be used pursuant to the fuel cost pass-through legislation, *see id.,* and in abbreviated rate case, *see Utah Dep't of Bus. Regulation v. Pub. Serv. Comm.,* 614 P.2d 1242 (Utah 1980). We add the 191 balancing account mechanism to the list today, noting that any rate established by the Commission in any one of these proceedings must be just, reasonable, and sufficient. *Utah Code Ann.* § 54-4-4 (2000).

Questar Gas Company v. Utah Public Service Commission, 34 P.3d 218, ¶ 12.

Like the 191 Balancing Account, the EBA was created separately from Utah Code Ann. § 54-7-12-4(a)(i), i.e. the pass through statute. Like the 191 Balancing Account, the EBA was created as a separate rate-making mechanism in part to address concerns about increasingly volatile fuel costs. Like the 191 Balancing Account, the Commission must consider the Company's position according to the balancing account procedures set forth in its EBA Order, other relevant orders, and the EBA Statute.

Because the EBA is the same type of account as the 191 Balancing Account, it follows that the interim rate process recognized in the *Questar* decision also applies to the EBA. There is no distinction between the EBA and the 191 Balancing Account with respect to their creation and purpose. Because the Commission has already endorsed the interim rate process for the EBA and because there is no basis upon which to distinguish the *Questar* decision, the Commission should find that the interim rate process applies to the EBA, just as it applies to the 191 Balancing Account.

Finally, the Commission has already approved, on an interim basis, the renewable energy credits balancing account ("RBA") sur-credit in the amount of approximately $4.0 million, effective June 1, 2012. There is virtually no difference between the EBA and the RBA. They are both temporary rates and they both include estimates. The only difference is that this year,

the RBA interim rate benefits customers, and the EBA interim rate does not. As the Company noted at the May 14, 2012 hearing, it would be inappropriate for the Commission to approve the interim RBA sur-credit, without also approving the interim EBA surcharge. The Commission should treat the RBA and the EBA symmetrically.

B. Rocky Mountain Power Has Made A Prima Facie Showing That the Interim Rates It Seeks Are Just, Reasonable and Sufficient.

Because the EBA is similar to the 191 Balancing Account in its creation and purpose, the Commission should apply the same standard for reviewing interim rates as that used in the 191 Balancing Account. This standard requires Rocky Mountain Power to make a prima facie showing that interim rates are *just, reasonable, and sufficient,* in accordance with Utah Code Ann. § 54-4-4 (2000). See *Questar Gas Company v. Utah Public Service Commission,* 34 P.3d 218, ¶ 12 (Utah 2001) (emphasis added).

Specifically, the Commission's longstanding practice when considering an application for interim rate relief under the 191 Balancing Account is to determine whether Questar has demonstrated by adequate prima facie evidence that approval of its proposed increase or decrease is justified on an interim basis pending completion of the Division's audit of the account. *See, e.g., In the Matter of the Pass-Through Application of Questar Gas Company for an Adjustment in Rates and Changes for Natural Gas Services in Utah,* 2007 WL 5527434 (Utah P.S.C. Oct. 31, 2007 (No. 07-057-09) and *In Re Questar Gas Co.,* 2009 WL 1507698 (Utah PSC), February 26, 2009.

Consistent with this standard, in this case the Company has made an adequate prima facie showing that approval of its proposed increase is justified on an interim basis pending completion of the Division's audit of the EBA. As noted above, the Commission has already determined that the EBA, as approved in the EBA Order, results in just and reasonable rates and

is in the public interest. The EBA deferral amount is merely a true-up, i.e., 70 percent of the difference between base net power costs included in rates and actual energy balancing account costs incurred by the Company during the deferral period.

For the Commission to determine if the rates derived from the EBA deferral are just, reasonable and sufficient, the Commission should consider Tariff Schedule 94 which describes the costs and revenues (including the accounts to which they are assigned) that are to be included in the formula that determines the monthly accrual rate for the EBA, in addition to considering the Company's application and supporting testimony, the Division's report and recommendation, and parties' comments in response to the Division's report and recommendation. No additional evidence is required at this stage.

Tariff Schedule 94, filed in its final form by the Company on May 21, 2012, complies with relevant Commission orders and Utah law. Because the Company's application including supporting testimony and exhibits conforms to the EBA as designed and approved by the Commission and includes the appropriate costs and revenues as described in Tariff Schedule 94, this constitutes a prima facie case that the EBA deferred account will result in just, reasonable and sufficient rates. *See Questar Gas Company v. Utah Public Service Commission,* 34 P.3d 218, § 15 (Utah 2001) (In response to the Commission's contention that it was unable to determine a just and reasonable rate by considering only the factors included in Questar's CO_2 application, the Utah Supreme Court noted that Questar's tariff describes which costs and revenues are to be included in the formula that determines the monthly accrual rate for account 191 and that an application for balancing account approval that conforms to the procedures described therein and contains the appropriate costs and revenues as described in the company's tariff should result in just and reasonable rates).

No party has disputed that the Company's calculations and deferral amounts are consistent with the formulas in Tariff Schedule 94. Moreover, the Division's recommendation for interim approval of the Company's request for the $8.9 million surcharge, with minor modifications to comply with the Commission's order in Docket No. 11-035-T10, confirms that interim rates sought by the Company are just, reasonable and sufficient. Finally, no party has brought forth any evidence that the deferral amounts are not just, reasonable, and sufficient.

UIEC claims that the deferral amounts are problematic because they contain estimates. This is just another attempt by UIEC to delay the implementation of the EBA. Forecasts and estimates are used in the normal course of utility business. In fact, Questar's 191 Balancing Account also includes estimates. Such estimates are an essential part of accrual accounting prescribed by generally accepted accounting principles and are necessary to account for actual goods and services received or performed during the accounting period in question. Estimates are utilized to properly recognize revenue or expense when detailed information regarding a particular business transaction is not available prior to the accounting period close. Ultimately, however, actual amounts will be known and trued up in a subsequent filing. UIEC's argument that the EBA is a much more complex balancing account than Questar's and should be treated differently on this basis is simply not true with respect to the interim rate process. The Division states in its report that it will continue to investigate the Company's use of accounting estimates as part of its audit. The issue of including accounting estimates in the calculation of the deferral did not prevent the Division from recommending approval of interim rates.

Nevertheless, the language in the EBA Statute suggests that the Company's application for recovery of costs could include estimates, so long as there is an annual reconciliation of actual costs. For example, the EBA Statute states, in part:

> An electrical corporation: (i) may, with approval from the commission, recover *costs* under this section through: (A) base rates; (B) contract rates; (C) surcredits; or (D) surcharges; and (ii) shall file a reconciliation of the energy balancing account with the commission at least annually with *actual costs* and revenues incurred by the electrical corporation.

Utah Code Ann. § 54-7-13.5(2)(c) (emphasis added). The EBA Statute could have required that only "actual" costs be included under Utah Code Ann. § 54-7-13.5(2)(c)(i) above, but it didn't. Instead, the language contemplates a category of recoverable costs that is broader than that. Hence, it appears that the EBA Statute contemplated that estimates would necessarily be included as a matter of course, for the reasons set forth above.

UIEC argues for an opportunity to file testimony. UIEC and all parties will have an opportunity to fully participate in a prudence review following the Division's final audit. It would be inconsistent with the interim rate process set forth in the EBA Order, not to mention a waste of resources, for the Commission to hold a prudence review at this juncture when a separate prudence review must occur before final rates are set.

III. CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission find that the interim rate process applies to the EBA deferral amount and that the Company has provided adequate prima facie evidence that the interim rates the Company seeks are just, reasonable and sufficient. Accordingly, Rocky Mountain Power is entitled to the interim rate relief sought in the amount of $8.9 million.

DATED this 29th day of May 2012.

Respectfully submitted,

ROCKY MOUNTAIN POWER

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CERTIFICATE OF SERVICE

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