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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Rocky Mountain Power's Proposed Revisions to Electric Service Schedule No. 94, Energy Balancing Account (EBA)	**COMMENTS OF THE UTAH INDUSTRIAL ENERGY CONSUMERS** Docket No. 16-035-T05

Pursuant to the Notice of Filing and Comment Period issued by the Public Service Commission ("Commission") on April 18, 2016, the UIEC intervention group submits the following comments in response to Rocky Mountain Power's ("RMP" or "Company") proposed Modifications to Schedule 94, Energy Balancing Account, and its proposed revisions to Schedule 94.

1. The UIEC recommend that the Commission reject any modification to Schedule 94 that would suggest the EBA is no longer a Pilot Program. Pursuant to the Commission's orders, the EBA Pilot Program is currently under review. Whether or not the EBA should continue beyond the end of 2016, and if so, with what kind of changes, will depend of the result of the currently pending review. Until that review has been completed, it is premature to designate Schedule 94 as anything other than a "pilot program."

2. On April 14, 2016, RMP submitted modifications to Schedule 94, Energy Balancing Account ("EBA"), for the stated purpose of making "conforming edits consistent with legislative changes Utah Code Section 54-7-13.5 enacted in the 2016 general session of the Utah State Legislature." Cover Letter to Advice No. 16-04. On the First Revised Sheet No. 94.1 of the Company's tariff, the proposed revisions consist, in part, of striking the following language which appears in earlier versions of the tariff:

> The EBA Pilot Program shall be for a period of approximately four years beginning on October 1, 2011, and ending on December 31, 2015.[1]

First Revision of Sheet No. 94.1. A similar change has been made to the Fifth Revision of Sheet No. B.1, which lists Schedule 94 in an index of service schedules, and now strikes out the words "Pilot Program." Apparently, the Company contends that Senate Bill ("SB") 115 terminated the EBA Pilot Program.[2] The UIEC disagrees.

3. By Stipulation in the 2014 general rate case RMP and the stipulating parties agreed to extend the Pilot Program until December 31, 2016. The Stipulation states:

> *The Parties agree and request that the Commission approve herein an extension of the current EBA pilot, which currently ends December 31, 2015, of one year through December 31, 2016.* … The Parties agree that the EBA filings will continue on their established schedules, subject to the one-year extension of the EBA pilot as requested herein if approved by the Commission.

Stipulation, Docket No. 13-035-185 (June 25, 2014) at 6-7 (emphasis added). The Stipulation was approved by the Commission. Report and Order, Docket No. 13-035-185 (August 29, 2014) at 18.

[1] The pilot period has been extended by Commission Order.

[2] This seems to be a somewhat disingenuous position in light of the Company's statements in the recent docket to investigate RMP's carrying charges, in which the Company advocated that "no change to the EBA carrying charge should be made until the end of the pilot period, with consideration of the interest rate evaluation during the re-evaluation of the EBA in 2016." Order, Docket No. 15-035-69 (January 20, 2016) at 10.

4. The EBA statute provides that the Commission may allow an energy balancing account to go into effect only if it finds, among other things, that it is in the public interest. Utah Code Ann. § 54-7-13.5(2)(b)(i). The purpose of the Pilot Program was to implement the EBA on a temporary basis and then to investigate whether (under the procedures put in place in Docket No. 09-035-15), an EBA could operate in a way that would be in the public interest. *See* Report and Order, Docket No. 09-035-15 (March 2, 2011).[3] That investigation is still under way.

5. Now that SB 115 has amended the EBA to remove the 70/30 sharing bands (which have been in place since the Commission's order in Docket 09-035-15),[4] it is even more important that the Commission complete its evaluation of the Pilot Program to determine whether the EBA is in the public interest. The 70/30 sharing mechanism was put in place because it was thought that to give the Company 100 percent recovery on excess power costs would act as a disincentive to minimizing power costs. To avoid authorizing an EBA that would be contrary to the public interest, the Commission required a 70/30 sharing of the risk.[5] Without the sharing mechanism,

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[3] In its Order approving the Pilot Program, the Commission explained:

> To serve the public interest and to 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. Achieving these objectives is a complex endeavor due to many factors, including another recent statute which allows the Company to request rate changes outside of a general rate proceeding for major plant additions. Both the major plant addition and Energy Balancing Account statutes complicate the traditional ratemaking process of matching all costs and revenues over a given time period to determine just and reasonable rates. We therefore approve a balancing account on a pilot basis and apply the principle of gradualism as we design and implement this additional ratemaking mechanism.

Report and Order, Docket No. 09-035-15 at 67 (March 2, 2011) (emphasis added).

[4] SB 115 states:

> (d) Beginning June 1, 2016, for an electrical corporation with an energy balancing account established before January 1, 2016, the commission shall allow an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs as determined and approved by the commission under this section.

SB 115 at lines 558-61, codified at Utah Code Ann. § 54-7-13.5(2)(d).

[5] In its order approving the EBA Pilot Program, the Commission explained the reason for the sharing mechanism:

the Commission may find it much more difficult to conclude that the EBA is "in the public interest." For that reason, a thorough evaluation of the Pilot Program is essential to determine whether the EBA should continue on a more permanent basis.

6. SB 115 does not terminate the EBA Pilot Program or mandate a permanent EBA. In fact, SB 115 expressly conditions the continuation of the 100% recovery mechanism upon the Commission's finding that the mechanism is reasonable and in the public interest.[6] Thus, the enactment of SB 115 does not, as the Company seems to assume, guarantee that the EBA should continue or obviate the need for the Commission to monitor vigilantly any changes in circumstances that would make the EBA contrary to the public interest.

7. The evaluation of the EBA Pilot Program should continue to completion. The Division already has received initial input from parties, and will file its report on May 20, 2016. The UIEC anticipate that the Commission will invite comments on the Division's report once it has been submitted. The Division's report together with the comments of interested parties will be essential to a Commission determination of whether the continuation of the EBA is in the public interest.

> We recognize … *relying solely on prudence reviews will shift too much of the risk for suboptimal planning and operation currently borne by the Company, who is in the best position to manage this risk, to customers, who are not*. Therefore, the balancing account we adopt requires both Company customers and shareholders to remain at risk for a portion of the actual net power cost which deviates from approved forecasts. This decision recognizes the value of Company management having meaningful financial incentives to minimize net power cost in the short-run and long-run, regardless of the extent of net power cost volatility. *We find a sharing mechanism is the best method, at this point, to ensure customer and shareholder interests are aligned and the public interest is maintained*.

Report and Order, Docket No. 09-035-15, at 70 (emphasis added).

[6] SB 115 provides in part:

> The commission shall report to the Public Utilities and Technology Interim Committee before December 1 in 2017 and 2018 regarding whether allowing an electrical corporation to continue to recover costs under Subsection (2)(d) is reasonable and in the public interest.

SB 115 at lines 601-04, codified at Utah Code Ann. § 54-7-13.5(6).

8. As the Commission is aware from previous comments and pleadings of interested parties, there are some who believe that the EBA in its current form is not in the public interest, primarily because it unreasonably shifts the risk of power cost recovery to the ratepayers. Were it not for the 70/30 sharing mechanism, the EBA would make the Company's shareholders immune from the consequences of Company decisions that might increase costs,[7] as well as the resource policy decisions of other PacifiCorp jurisdictions.[8] Among other infirmities, the EBA also apparently allows recovery of fixed costs through the EBA (contrary to the EBA statute), may allow double recovery of capacity costs, undercuts the effect of seasonal energy prices on customer bills, and obscures pricing information that customers require to effectively reduce peak demand and energy consumption.

9. The Pilot Program evaluation is essential in informing the Commission about the consequences of the EBA so that the program can be terminated as inconsistent with the public interest or so that adjustments can be made going forward to ensure that ratepayers do not become the guarantors of the Company's risky policies and practices or of the resource decisions of other jurisdictions that affect the allocation of power costs to Utah.

10. For the foregoing reasons, the UIEC encourage the Commission to reject the Company's tariff filing to the extent it purports to terminate the Pilot Program.

[7] How will PacifiCorp's participation in CAISO, the EIM, and ISO affect the costs that flow through Utah's EBA, and why should ratepayers be solely at risk for the consequences?

[8] Recent legislation in Oregon relating to that state's resource choices may affect the allocation of costs to Utah, potentially increasing power costs that will flow through the EBA to Utah ratepayers. Without modifications to the EBA (or its elimination), Utah ratepayers will be paying for Oregon resource policy choices.

DATED this 2nd day of May, 2016

/s/ William J. Evans

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CERTIFICATE OF SERVICE
(Docket No. 16-035-T05)

I hereby certify that on this 2nd day of May 2016, I caused to be e-mailed, a true and correct copy of the foregoing **COMMENTS OF THE UTAH INDUSTRIAL ENERGY CONSUMERS** to:

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