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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

IN THE MATTER OF ROCKY MOUNTAIN	)	
POWER’S PROPOSED REVISIONS TO	)	Docket No. 16-035-T05
ELECTRIC SERVICE SCHEDULE NO. 94,	)	
ENERGY BALANCING ACCOUNT (EBA)	)	

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**ROCKY MOUNTAIN POWER’S REPLY COMMENTS**

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Rocky Mountain Power, a division of PacifiCorp (“Company” or “Rocky Mountain Power”), hereby submits its Reply Comments in accordance with the Notice of Comment and Filing Period issued by the Public Service Commission of Utah (“Commission”) on April 18, 2016.

**INTRODUCTION**

Rocky Mountain Power filed its proposed revisions to Electric Service Schedule No. 94, Energy Balancing Account (“EBA Tariff”), on April 14, 2016 (“Application”). In the Application, the Company filed proposed changes to the EBA Tariff to make conforming edits consistent with legislative changes to Utah Code Ann. § 54-7-13.5 made through Senate Bill 115 (“SB 115”) passed in the 2016 General Session of the Utah Legislature.

The Commission issued its Notice of Comment and Filing Period on April 18, 2016 (“Notice”). In the Notice, the Commission allowed interested parties to file comments on the Application by May 2, 2016 and reply comments by May 9, 2016.

Comments were filed on May 2, 2016, by the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), the Utah Association of Energy Users (“UAE”) and the UIEC Intervention Group (“UIEC”). The comments of the Division and UAE objected to two aspects of the proposed EBA Tariff, removal of references to the pilot program nature of the EBA Tariff and failure to note that the requirement of SB 115 that the Commission allow recovery of 100 percent of EBA costs was not effective until June 1, 2016. The Division proposed modifications to the proposed tariff to remove these objections. The comments of the Office and UIEC noted the same objections to the proposed EBA Tariff, but also suggested that SB 115 did not affect the duration of the EBA pilot program, which had previously been extended through December 31, 2016 based on a stipulation of parties approved by the Commission in 2014.<sup>1</sup> The Office also proposed modifications to the proposed EBA Tariff.

Rocky Mountain Power does not object to the comments of the Division and UAE and accepts the modifications to the proposed EBA Tariff consistent with the recommendations of the Division. The Company objects to the recommendation of the Office and UIEC that the EBA pilot program may terminate on December 31, 2016. This recommendation is contrary to the clear intent of the Legislature as expressed in SB 115.

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<sup>1</sup> See Report and Order, Docket No. 13-035-184 (Utah PSC Aug. 29, 2014) at 9, 70.

## ARGUMENT

The Utah Legislature amended Section 54-7-13.5 in three ways through SB 115. The first amendment addresses the definition of “Base rates” and is not at issue in this proceeding.

The second amendment added a new Subsection (2)(d), as follows:

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.

Utah Code Ann. § 54-7-13.5(2)(d) (emphasis added). The third amendment added a new Subsection (6), as follows:

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.

*Id.* § 54-7-13.5(6) (emphasis added).

In addition, SB 115 added a new Subsection (2) to Section 63I-1-254 as follows:

Subsection 54-7-13.5(2)(d) is repealed on December 31, 2019.

*Id.* § 63I-1-254(2).

At the time SB 115 was passed by the Legislature, the EBA that was established by the Commission as a pilot program in March 2011 in Docket No. 09-035-15<sup>2</sup> had been in existence well before January 1, 2016. The EBA allowed the Company to defer and amortize only 70 percent of the difference between its actual prudent EBA costs and the amount included in base rates. The EBA pilot program was originally set to conclude on December 31, 2015. However, in August 2014, the Commission approved a stipulation of the parties in the Company’s 2014

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<sup>2</sup> See Report and Order, Docket No. 09-035-15 (Utah PSC Mar. 2, 2011).

general rate case extending the pilot program for one more year through December 31, 2016.<sup>3</sup> In this context, the intent of the legislative amendments is clear.

First, the Legislature mandated that the Commission allow the Company to recover 100 percent of its prudent EBA costs. *See id.* § 54-7-13.5(2)(d). Second, the Legislature, directed that the Commission provide it with reports in December 2017 and 2018 “regarding whether allowing the Company *to continue to recover 100 percent of its prudent costs* is reasonable and in the public interest.” *See id.* § 54-7-13.5(6) (emphasis added). Third, the Legislature provided that its mandated 100 percent recovery of prudently incurred costs would terminate on December 31, 2019. *See id.* § 63I-1-254(2).<sup>4</sup>

While it may be debatable whether the EBA was to remain a pilot program under this legislation, as defined in § 63I-1-254(2), it is not reasonably debatable that it was to continue at least until December 31, 2019, absent any further action by the Legislature. If the argument of the Office and UIEC that the program could be terminated by the Commission on December 31, 2016 were accepted, the requirement that the Commission “shall allow” the Company to recover 100 percent of its prudent costs through December 31, 2019 would be rendered meaningless. *Id.* §§ 54-7-13.5(2)(d) and 63I-1-254(2). Likewise, the requirement that the Commission provide reports to the Legislature “regarding whether allowing an electrical corporation *to continue to recover costs under Subsection (2)(d)* is reasonable and in the public interest” would be superfluous. *Id.* § 54-7-13.5(6) (emphasis added).

The argument of the Office and UIEC conflicts with fundamental principles of statutory interpretation which require that statutes be interpreted in a way that effectuates the intent of the

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<sup>3</sup> *See* footnote 1, *supra*.

<sup>4</sup> Of course, the Commission retains the right under Section 54-7-13.5 to continue 100 percent recovery in the public interest after December 31, 2019, but is no longer not mandated to do so.

Legislature by reading the plain language of the statute and by interpreting all provisions of the statute together in a manner that gives meaning to each and does not render any portion of the statute superfluous.<sup>5</sup> The Office’s and UIEC’s arguments ignore the plain meaning of the words “shall allow” and “to continue to recover” and read legislatively imposed requirements out of the statute. Thus, their arguments must be rejected.

Furthermore, UIEC’s arguments that SB 115 did not affect the Commission’s prior orders establishing the EBA as a pilot program that would terminate unless renewed by the Commission by December 31, 2016 and that the EBA is not in the public interest without a sharing band are wrong. The Commission derives its authority from the Legislature.<sup>6</sup> Thus, a statutory mandate takes precedence. Here the Legislature has mandated that the Commission allow recovery of 100 percent of prudent EBA costs through December 31, 2019. This clearly takes precedence over the Commission’s prior decisions that would have potentially allowed termination of the EBA on December 31, 2016 and that found the sharing mechanism to be the best method at that point in time to ensure that the public interest was maintained.<sup>7</sup>

Rocky Mountain Power’s failure to include language in its proposed EBA Tariff regarding the effective date of the change in recovery of the difference in prudent EBA costs

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<sup>5</sup> *State v. Kay*, 2015 UT 43, ¶ 15, 349 P.3d 690, 693 (“As with any question of statutory interpretation, our primary goal is to effectuate the intent of the Legislature. *State v. Watkins*, 2013 UT 28, ¶ 18, 309 P.3d 209. The best evidence of the Legislature’s intent is the statute’s plain language. *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. Further, ‘we interpret[ ] statutes to give meaning to all parts, and avoid [ ] rendering portions of the statute superfluous.’ *Watkins*, 2013 UT 28, ¶ 23, 309 P.3d 209 (alterations in original) (internal quotation marks omitted)).

<sup>6</sup> *Heber Light & Power Company v. Utah Pub. Serv. Comm’n*, 2010 UT 27, ¶ 17, 231 P.3d 1203 (“It is well established that the Commission has no inherent regulatory powers other than those expressly granted or clearly implied by statute.”) (quoting *Hi-Country Estates Homeowners Ass’n v. Bagley & Co.*, 901 P.2d 1017, 1021 (Utah 1995) (quoting *Mountain States Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 754 P.2d 928, 930 (Utah 1988)). See also *Interwest Corp. v. Pub. Serv. Comm’n*, 510 P.2d 919, 920 (Utah 1973) (“The Public Service Commission was created by the legislature and . . . can only exercise those powers granted by the legislature.”)

<sup>7</sup> See Report and Order, Docket No. 09-035-15 at 70.

from 70 percent to 100 percent on June 1, 2016, was not an attempt to recover more than provided by SB 115. Section 54-7-13.5(2)(d) is clear in providing that 100 percent cost recovery commences on June 1, 2016. Accordingly in its application proposing EBA tariff changes the Company requested an effective date of June 1, 2016. The Company had always intended to apply the tariff in that manner and appreciates the clarification provided by the parties.

Finally, Rocky Mountain Power acknowledges that, with the exception of the changes related to the sharing band, the termination date and additional evaluation periods discussed in detail above, the EBA's structure, methodology and evaluation will remain as approved by the Commission.

#### **CONCLUSION**

Based on the foregoing, Rocky Mountain Power respectfully requests that the Commission approve the edits to the EBA tariff as proposed by the Division in its comments.

DATED this 9<sup>th</sup> day of May 2016.

Respectfully submitted,

ROCKY MOUNTAIN POWER



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